

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 4 December 1985

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY
SIR DAVID AKERS-JONES, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.
SECRETARY FOR TRADE AND INDUSTRY

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, O.B.E., J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT

THE HONOURABLE RICHARD LAI SUNG-LUNG

DR. THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE LEE YU-TAI

THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE LIU LIT-FOR, J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE POON CHI-FAI

PROF. THE HONOURABLE POON CHUNG-KWONG

THE HONOURABLE HELMUT SOHMEN

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING

DR. THE HONOURABLE DANIEL TSE CHI-WAI, J.P.

THE HONOURABLE ANDREW WONG WANG-FAT

THE HONOURABLE PANG YUK-LING, I.S.O., J.P.

SECRETARY FOR HOUSING (*Acting*)

ABSENT

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE TAM YIU-CHUNG

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL

MR. LI WING

Papers

The following papers were laid pursuant to Standing Order 14(2):—

Subject L.N.No.

Subsidiary Legislation:

Import and Export (Strategic Commodities) Regulations. Import and Export (Strategic Commodities) Regulations (Amendment of Schedule) Order 1985.....	325
Public Health and Urban Services Ordinance. Public Health and Urban Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 3) Order 1985.....	326
Public Health and Urban Services Ordinance. Public Health and Urban Services (Designation of Libraries) (No. 4) Order 1985	327
Public Health and Urban Services Ordinance. Public Swimming Pool (Designation) (No. 2) Order 1985	328

Sessional Papers 1985-86:

No. 23—Hong Kong Productivity Council—Annual Report 1984-85.

Oral answer to question**Falling objects**

1. MRS. NG asked (in Cantonese):—*In view of the fact this year there have been numerous incidents of falling objects resulting in deaths and injuries, will Government review whether the existing measures, especially those on education, to prevent these incidents are adequate?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, the existing measures to tackle the problem of falling objects from high-rise buildings are kept under review from time to time.

The first measure is police investigation. Where incidents of falling objects occur at buildings under construction, repair or decoration, the responsibility rests with the contractors concerned. They can be readily identified. But police investigation of incidents involving objects falling from high-rise residential buildings is always fraught with difficulties. To identify the culprits, the police

are required to invite witnesses to come forward with information, to examine the objects for finger-prints and other clues and to conduct door to door enquiries. In view of the very large number of flats and people involved, these investigations are time-consuming and do not always produce the desired results. Their success depends entirely on the co-operation of the witnesses.

It is difficult to draw any conclusion on the effectiveness of the police action. But even though the police may not be able to identify the culprits in every reported incident, door to door enquiries by the police do produce a deterrent effect on such criminal behaviour.

Secondly, preventive public education involving, notably, district boards and district fight crime committees is the best approach to this particular problem. At the district level, district officers and their staff through regular liaison with mutual aid committees, residents associations, owners corporations, schools and other district organisations, will continue the task of educating the public about such anti-social behaviour. In November last year, a publicity campaign was launched with success by the District Fight Crime Committee in Wong Tai Sin where posters, stickers and pamphlets were distributed to residents. A similar campaign was also organised by the Southern District Board in August this year.

Members may recall the periodic Announcement of Public Interest (API) on television depicting how a selfish person by throwing a bottle from his home in a high-rise flat has fatally injured his daughter below. The Government is mindful of the need to review the adequacy of public education on this problem. To strengthen people's awareness of the dangers of falling objects, a special territory-wide campaign will be mounted before the end of the year. As part of the campaign, the existing API will be replaced by a new one. Additionally, new posters will also be produced and widely distributed.

Written answer to question

Amendments to section 27 of the Magistrates Ordinance

2. MR. MARTIN LEE asked:— *Why has the Government taken so long in proposing amendments to section 27 of the Magistrates Ordinance (Chapter 227) when there has long been agreement between the Hong Kong Bar Association, the Law Society of Hong Kong, and the Hong Kong Magistrates Association on the undesirability and unfairness in enjoining a magistrate to amend a defective complaint, information or summons as opposed to giving him a discretion to do so in the interest of justice?*

ATTORNEY GENERAL:—A proposal to amend section 27 of the Magistrates Ordinance (Chapter 227) to allow the magistrate a discretion in relation to the amendment of a defective complaint, information or summons cannot be

considered in isolation because the provision concerned (subsection (2) of section 27) is linked with other subsections. When considering an amendment, it is necessary to look at the whole of section 27 to create an acceptable overall procedure.

Drafting legislation was circulated for discussion some time ago. Mr. Martin LEE, then chairman of the Hong Kong Bar Association, advanced some helpful and penetrating criticisms of that draft. The points made by him were subsequently considered within chambers. Various views were expressed but no consensus was reached. Since then, there have been delays in dealing with this problem. However, I have looked into the matter as a result of Mr. LEE's question and I will see whether an acceptable solution can be found in consultation with all interested parties. To show earnest in the matter, a new draft Bill has already been sent to Mr. LEE for his comments. I am grateful to Mr. LEE for drawing this matter to my attention.

Oral answers to questions

Penalties for driving offences and disqualification from driving

3. MR. MARTIN LEE Asked:—*With regard to the provisions relating to penalties and disqualification from driving contained in the Road Traffic Ordinance (Chapter 374) and the Road Traffic (Driving-Offence Points) Ordinance (Chapter 375) will the Administration please clarify the following:*

- (a) *who decides which procedure should be followed in any particular case;*
- (b) *whether there is any confusion (particularly in relation to 'speeding' offence) occasioned by the availability of two different procedures resulting in different penalties and consequential disqualification provided by these two Ordinances; and*
- (c) *whether it is desirable and in the interest of uniformity to provide by law as to when a particular procedure will be adopted and not the other?*

SECRETARY FOR TRANSPORT:—Sir, there are two procedures for dealing with offences under the Road Traffic Ordinance (Chapter 374). In all cases, a prosecution may be commenced by the laying of an information in respect of an offence and the matter proceeds to trial before a magistrate in the ordinary way. There is, however, an alternative procedure under the Fixed Penalty (Criminal Proceedings) Ordinance (Chapter 240) in respect of certain specified offences, including speeding. Under this Ordinance, a fixed penalty notice may be issued to the alleged offender who may pay the fixed penalty or elect to have the case tried before a magistrate.

In practice, although the Attorney General has the overall responsibility for prosecuting offences, the decision as to which procedure should be used is exercised by a police officer. The decision is based on the perceived seriousness

of the alleged offence, with the Road Traffic Ordinance being used for more serious offences.

On the question of disqualification, where an offender is convicted by a magistrate, the magistrate has the power to order a disqualification in prescribed circumstances. Also, under the Road Traffic (Driving-Offence Points) Ordinance (Chapter 375), a magistrate may order a disqualification where an offender has accumulated 15 or more driving-offence points. Where an offender has incurred a disqualification, he does not incur driving-offence points for that offence and any previously accrued points are extinguished.

Three categories of offences can be identified when examining the interrelationship of the alternative procedures for dealing with offences under the Road Traffic Ordinance. They are:

First, offences which are not covered by the Fixed Penalty (Criminal Proceedings) Ordinance and these can only be proceeded with by way of information. The court has a general power under section 69 of the Road Traffic Ordinance to disqualify a person convicted of any offence under the Ordinance. The period of disqualification is not fixed but is 'for such period as the Court thinks fit'.

Secondly, offences other than speeding which also give rise to penalty points under the Road Traffic (Driving-Offence Points) Ordinance. Both methods of prosecution can be used. If a case is dealt with by information the court may impose any disqualification it thinks fit. If the court does disqualify a person they are not liable to receive the penalty points attributable to that offence. In addition any previously accrued points are extinguished. If the court does not disqualify then penalty points will accrue in the usual way, as they would if the fixed penalty procedure was adopted. In these cases the two systems can co-exist without difficulty.

Thirdly, speeding offences under section 41 of the Road Traffic Ordinance. The difference between speeding offences and those I have just referred to in the Road Traffic Ordinance is that section 41(2) gives a specific direction to the court on disqualification. If a case which comes before the court on information involves a third or subsequent offence the court must impose a disqualification of 12 months. The possibility of disqualification under the Road Traffic (Driving-Offence Points) Ordinance arises on the accumulation of 15 points. A conviction under section 41 of the ordinance attracts three points. Five speeding convictions are therefore necessary before a person becomes liable to disqualification and it is this third category of offences which might cause confusion.

It is not considered necessary to provide by law as to when a particular procedure will be adopted, as possible confusion might only arise as regards disqualification as a result of speeding offences. An inter-departmental working group has examined this anomaly, and I intend to recommend to Transport Advisory Committee and Executive Council the removal of the mandatory

disqualification provision under section 41(2) of the Road Traffic Ordinance. The discretionary power of the court to order disqualification under section 69 of the Ordinance would remain. Upon endorsement of the proposal by Transport Advisory Committee and Executive Council. I would submit to this Council for consideration the necessary legislative amendments.

MR. MARTIN LEE:—*Sir, may I first of all thank the Secretary for a very detailed and carefully prepared answer. May I ask him for clarification on the following three matters:*

- (1) are there any departmental guidelines as to when a particular procedure is to be used;*
- (2) if so, is the Secretary prepared to let Members of this Council have copies of the same; and*
- (3) is the decision as to which procedure should be used exercised by a police officer of any rank or only by a relatively senior police officer?*

SECRETARY FOR TRANSPORT:—*Sir, yes, detailed guidelines exist in the Traffic Wing of the Royal Hong Kong Police Force and these are used in determining the procedures to be adopted for speeding offences under the Ordinances. These are internal instructions, Sir, and I would need to consult the Commissioner of Police before undertaking to distribute copies of these to Members. I will so discuss with him. As to the question of who takes the decision on which procedure to use, the practice is that the police officer who stops the motorist in connection with the offence decides which course of action to take in accordance with the policy instructions laid down at headquarters level, and generally speeding in excess of 30 kilometres would attract the proceeding under the Road Traffic Ordinance, rather than a fixed penalty. (Annex I)*

MR. LEE YU-TAI:—*Sir, is it true that in some cases people have paid a fixed penalty for speeding and then are notified that the penalty is withdrawn and court summons are issued instead? If so, is this tantamount to someone having served the sentence and then tried again for the same offence?*

SECRETARY FOR TRANSPORT:—*Yes, until recently, Sir, where a person received either a fourth speeding ticket or was proceeded against for the fourth time as if it was a combination of summons and fixed penalties then the fixed penalty in the case of a fourth offence was withdrawn by the Commissioner of Police and proceedings under the Road Traffic Ordinance were instituted. This past practice has now ceased, Sir.*

MR. NGAI:—*Sir, in order to alleviate the hardship encountered especially by professional drivers, should the Government consider giving written warnings to those who have accumulated a record of two speeding offences in a row and what is the current procedure for appeal by disqualified drivers?*

SECRETARY FOR TRANSPORT:—Yes, Sir, we do have under consideration the question of a warning to those who are approaching the danger level in term of penalty points. As to the appeal procedure, I am afraid I do not know exactly what it is and I'll have to undertake to give Mr. NGAI a written answer. (Annex II)

Proposed tram depot in Sai Ying Pun

4. MR. LIU asked (in Cantonese):—*With regard to Government's plan to approve the proposal to build a tram depot in the Sai Ying Pun reclamation area, will Government inform this Council:*

- (a) whether effective measures will be taken to control noise nuisance that may arise after the construction of the depot, so as to minimise the impact on residents;*
- (b) whether the transport Department has devised satisfactory measures to solve traffic congestion problems that may arise after the construction of the depot; and*
- (c) whether Government has any plans to identify a location in Sai Ying Pun for the construction of community or recreational facilities, to replace the land in the reclamation area which was originally intended for a park and resting place for residents of the district?*

SECRETARY FOR TRANSPORT:—Sir, first, the Hong Kong Tramways Co. Ltd. has undertaken to implement the following measures to minimise any noise nuisance:

- (a) improvement work would be carried out to the tram tracks so as to reduce noise from gear whine and the rolling stock;
- (b) the tracks leading to the new depot would be carefully aligned to avoid sharp turns and thus reduce wheel squeal; and
- (c) the design of the new depot would ensure that the sidings and workshop would be screened off from nearby residential development by the company's own buildings.

The proposed site for the new tram depot in Sai Ying Pun is currently used as a lorry park and the tram depot is unlikely to generate more noise than is produced by the heavy vehicles currently using the lorry park. Indeed, I would hope that the noise reduction measures which I have already referred would lead to an improvement in noise levels in the area.

Secondly, a tram depot at this site would not cause any major traffic congestion problems. Trams would only use the depot outside peak hours, when the traffic along both Whitty Street and Connaught Road West was light.

Nevertheless, necessary traffic management measures would be taken to ensure that the tram depot was fully compatible with the traffic flow in the area. In the longer term, consultants currently employed to examine the upgrading of Connaught Road West would take into account of the existing tram depot at this location in devising future traffic management schemes in the area.

Although the site in question was originally zoned for local open space, it is not particularly an attractive location for such use since it falls partly under a flyover and in the latest draft layout plan for the Western Reclamation, it has been re-designated as a tram depot. An alternative site, some 300 metres to the east, has now been designated as parkland. This would more than compensate for the loss of the original site since it is nearly seven times larger.

Sir, I can assure Mr. LIU that every possible measure will be taken to ensure that a new tram depot in Sai Ying Pun is compatible with the environment and will not adversely affect traffic or the provision of amenities in the area.

MR. LEE YU-TAI:—*Sir, can the Secretary for Transport inform this Council what steps the Administration will take to ensure that the Tramways Company will honour the following commitment: at the meeting of the Eastern District Board about two weeks ago, representatives of the Tramways Company and its holding company gave assurance that the profits generated from the development of the Sharp Street depot will be used for the improvement of the tramway system and to keep the tram fare at a low level?*

SECRETARY FOR TRANSPORT:—Well, Sir, I do believe that in its discussion with the district boards and with the Government about relocating the tram depot, the company has shown itself to be very conscious of its obligations to minimise any possible environmental problems and has been, I hope Mr. LEE will agree, very receptive to the suggestions. I can say that the Government will monitor the situation and will continue to maintain close consultation with the company and an atmosphere of a goodwill to ensure that all these promises and measures can be carried out fully.

Management of community centres

5. MR. LEE YU-TAI asked:—*The management of community centres was transferred from Social Welfare Department to City and New Territories Administration in June 1985. Will Government inform this Council:*

- (a) following this transfer, is there a reduction in the number of staff members who are assigned by Government to work in these centres;*
- (b) if there is a reduction, how does it affect the use of these centres by the public; and*
- (c) will Government consider any improvement?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, overall, there is no reduction of Government staff assigned to work in community centres, estate community centres and community halls. There were 394 staff solely from Social Welfare Department (SWD) working in these centres before the transfer while there are now 415 (230 from SWD and 185 from the City and New Territories Administration (CNTA)). The transfer of the management of community centres is to rationalise the resource allocation of SWD and CNTA so that the former can concentrate its manpower resources in social work services while the latter assumes the general role of community building. The process necessarily entails redeployment of staff resources including the withdrawal of professional staff from SWD in some cases.

Secondly, as there is no overall reduction of staff, it is perhaps a matter of how the changing-over of management has affected the use of these centres. With the transfer, we are able to provide better services to members of the public as a whole. Some group activities previously led by professional staff may have to be replaced by other activities organised by local bodies. In isolated cases whereby continuous professional input is required, expertise will be made available from children and youth centres or nearby social welfare and voluntary agencies. CNTA, SWD and the management committees of community centres concerned will provide necessary advice and assistance.

The answer to the last part of the question is yes, Sir. Government will continue to provide the necessary staff resources to ensure smooth running of the community centres. A supplementary provision of \$1.5 million has been sought to employ temporary community organisers in 1985-86 to assist in the manning of the facilities. It is also intended to increase the manning scale in order to maximise utilisation of community centres by, for example, having longer opening hours. At the same time, Government will continue to encourage local organisations to make more use of the community centre facilities.

MR. LEE YU-TAI:—*Sir, can the Secretary for District Administration inform this Council whether or not it is true that some community centres are closed on Sundays when presumably most people will be free to use their facilities? If the answer is yes, what are the reasons?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, it is true that not all the community centres are open seven days a week and this is due to staff constraints. As I said in the last part of my answer, it is intended to increase the manning scale in order to maximise utilisation of community centres, for example, by having longer opening hours.

MR. LEE YU-TAI:—*Sir, for the purpose of maximising utilisation of community centres, will the Secretary inform this Council whether the new manning scale will include the community organisers temporarily employed in 85-86?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, the supplementary provision which has been sought will go a long way in meeting such a demand.

MRS. TAM:—*Sir, with the disbandment of community work unit in these community centres as a result of the transfer, will the Government inform this Council whether the community work previously handled by Social Welfare Department in these community centres is now taken over by the CNTA and in what forms?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Where they were handled by professional staff and this does no longer require the professional input, this has been handled by the CNTA staff. Where certain organisations require professional input as I mentioned in my reply, such professional input can be obtained from the social welfare centres nearby or from voluntary agencies.

MR. HUI:—*Sir, I am asking more or less the same question but this is that the voluntary agencies nearby had been over-subscribed due to this temporary suspension. I was wondering whether the Government could inform this Council whether there are any substitute or replacement services to help the agencies which are now over subscribed?*

SECRETARY FOR DISTRICT ADMINISTRATION:—Sir, the transfer of responsibilities for these community centres is a very recent affair; they were only transferred in June. This obviously necessitates some adjustments to be made. Where the need arises, this will certainly be looked into in the future.

Disciplinary action on students by school authorities

6. MR. CHAN YING-LUN asked (in Cantonese):—*Can Government inform this Council:*

- (a) of its current policy towards administering disciplinary action by school authorities on students; and*
- (b) how it resolves complaints by students and parents concerning alleged excessive use of discipline by schools?*

SECRETARY FOR EDUCATION AND MANPOWER:—Sir, the general policy with regard to disciplinary action is that school authorities should exercise their discretion carefully in determining the kind of punishment considered appropriate for the offence taking into account the age of the pupil concerned.

The most common forms of discipline include detention, copying from textbooks and accumulation of demerits. In serious cases, there may be resort to corporal punishment, suspension or expulsion. As regards corporal punishment, Education Regulations 58 and 59 specify how and to whom it may be

administered and the Education Department issues circulars from time to time advising head teachers to consider carefully the appropriateness of such punishment in each individual case. As regards suspension and expulsion, detailed rules are set out in the codes of aid for aided primary and secondary schools and in the relevant regulations for Government schools. In particular, the department must be consulted before any child is expelled.

Where parents are dissatisfied with the nature or extent of the discipline administered to their children, the normal course is to complain to the head teacher in the first instance. If the complaint is rejected or if the reply given is unsatisfactory, parents can—and do—take their complaints to the district education officer who will investigate and take action as necessary with the school. Complaints about use of corporal punishment are of particular concern and teachers who are found to have administered such punishment improperly or excessively are warned. In serious cases, consideration would have to be given to cancelling the teacher's registration or teaching permit.

MR. CHAN YING-LUN (in Cantonese):—*Sir, about parents' complaints, does the Secretary for Education and Manpower have the statistics showing the tendency for the last three years?*

SECRETARY FOR EDUCATION AND MANPOWER:—*Sir, I am afraid I only have the recent figures on corporal punishment, not on all categories.*

MR. CHAN YING-LUN (in Cantonese):—*Sir, when did the Government form its policy towards disciplinary action and does the Government think it necessary to review the policy to reach the aim of administering proper disciplinary action?*

SECRETARY FOR EDUCATION AND MANPOWER:—*I think, Sir, this policy is of many years' standing. If any Member would wish to indicate the areas that they would wish to see reviewed I would be happy to consider those with the Director of Education.*

Noise pollution around schools

7. PROF. POON asked:—*Will Government inform this Council whether there are plans to tackle the problem of excessive noise affecting schools near to the airport and major roads?*

SECRETARY FOR EDUCATION AND MANPOWER:—Sir, the Government is well aware of the problems faced by certain schools as a result of increased noise levels in their vicinity.

A comprehensive study has been conducted to determine the extent of the problem and to assess various means of improvement. The study has established that the measures required would depend upon the intensity of the noise affecting a particular school. It might be necessary to instal double glazing, to seal the existing windows or simply keep existing windows closed. In all three cases, however, air-conditioning would be required.

A sample survey of schools indicates that a total of some 10 000 classrooms and special rooms might require treatment of one kind or another. The full cost of this treatment would be of the order of \$240 million with a recurrent cost (in respect of air-conditioning) of around \$50 million per annum.

Quite clearly, a very substantial programme would be required if noise is to be reduced to desirable levels in all schools currently affected. It is, however, possible to establish orders of priority, and to provide assistance to the most seriously-affected schools first. This is indeed the approach endorsed by the Board of Education and the Education Commission.

An agenda item paper will be submitted to the Finance Committee of this Council in the near future advising Members of the results of the study and seeking approval to bring forward more specific proposals dealing initially with the worst-affected schools. In order to avoid problems of this kind with our new schools, planning guidelines have been amended to ensure that noise levels are taken specifically into account in the allocation of sites. Where it is impossible to avoid a noisy site, remedial measures will be included in the project design and the necessary financial approval sought.

PROF. POON:—*Sir, when new roads or flyovers are planned at very close proximity to existing schools has the Government at the same time any plan to help these schools to combat the anticipated noise problem?*

SECRETARY FOR EDUCATION AND MANPOWER: —I think if I understand Professor POON correctly, he is talking about future cases. I think the answer is if it happens—of course I hope our planning if possible could avoid it—the same principles would apply.

Policy on conversion from right-hand drive to left-hand drive

8. MR. CHEONG-LEEN asked:—*To what extent is consideration being given to conversion of Hong Kong's traffic system from right-hand drive to left-hand drive, and can steps now be taken to review and to plan the policy for the next five to 10 years?*

SECRETARY FOR TRANSPORT:—Sir, no consideration is being given to the conversion of Hong Kong's traffic system from right-hand drive to left-hand drive, and I do not see the need to plan for such a change.

MR. CHEONG-LEEN:—*For how many years from now would it be considered there is no need to review whether or not the present system should be changed?*

SECRETARY FOR TRANSPORT:—Sir, I don't really have much to add to what I have just said. There is no need to change this system. To do so would be extremely costly; we would have to rebuild most of our roads because of the camber and geometry of the roads; we would have to change many of our public buildings for the ingress and exits and this will cost hundreds of millions of dollars and quite frankly we have other more pressing priorities.

Law on loitering

9. MR. PETER C. WONG asked:—*Is Government satisfied that the existing law on loitering is fair and equitable, and if so:*

- (a) is it performing a useful function in our efforts to combat crime; and*
- (b) is it being enforced in a satisfactory manner?*

ATTORNEY GENERAL:—The loitering provisions, contained in section 160 of the Crimes Ordinance, have been in operation since 1979. They were enacted in response to requests by the police for powers to combat a growing threat to the community in Hong Kong by small gangs and individuals who linger in public places and the common parts of public housing estates awaiting opportunities to commit crimes such as handbag snatching, pickpocketing, thefts from cars and robberies upon women.

The provisions are aimed at stopping serious crime before it can get underway. They make it an offence for a person loitering in a public place, or the common parts of a building, not to provide a satisfactory explanation when requested to do so.

It is also an offence for a person to loiter in a public place so as to obstruct others or to cause others to be concerned for their safety.

The provisions thereby enable the police to stop a suspect who is loitering suspiciously in a public place and require him to explain his behaviour.

The police believe the provisions are valuable in preventing crime. It is impossible to show how many serious crimes have been prevented by timely arrests on loitering charges but it is a fact that about 18 per cent of people arrested for loitering are subsequently charged for more serious offences. The police cite 18 recent cases, in which 25 persons were initially arrested on loitering charges, and in which subsequent investigations led to further charges

in respect of 47 robberies, 23 burglaries, nine rapes and four indecent assaults. Use of the provisions have produced notable reductions in robbery and burglary figures in certain areas. These examples, Sir, indicate that the provisions are, in Mr. Peter C. WONG's words, 'performing a useful function'.

The Government also considers that the police have been enforcing the law in a satisfactory manner. The relevant Police Headquarter's Order sets out clearly the circumstances in which an officer should act. It states that he must watch the suspect for as long as possible to observe a pattern of behaviour which is genuinely suspicious. It also states that the explanations offered by the suspect should be checked at or near the time he gives them to ensure that if the explanation is true and reasonable he will be released immediately.

The Government's view is reinforced by the fact that in the five and a half years since the enactment of the loitering provisions, the conviction rate has never been less than 60 per cent in any one year and has averaged 72 per cent. Furthermore, in 1984, the first complete year for which statistics were compiled, there were 2 644 prosecutions for loitering but in only 183 cases were there complaints lodged with CAPO. Only four of those were substantiated.

Accordingly, applying Mr. Peter C. WONG's criteria, the loitering provisions strike a fair and equitable balance between the public interest in preventing crime, and the right of innocent individuals not to be unduly harassed in the process of law enforcement.

However, Sir, four weeks ago, the Court of Appeal, by a majority decision, interpreted one of the loitering provisions in a manner that appears to reduce the effectiveness of these provisions in preventing crime and will lead to changes in police procedures. The strong dissenting opinion described the court's decision as having the effect of making the provision 'an empty shell'. In view of the conflict of judicial opinion, the Crown has decided to apply for leave to appeal to the Privy Council. That application, Sir, will be heard on 19 December next.

MR. PETER C. WONG:—*Sir, first of all I would like to thank the Attorney General for his very clear and lengthy answer and I would say that I am quite satisfied with it. However, it appears to me that the Attorney General in paragraph 2 touches upon subsection 1 of the loitering provision; in paragraph 3 it touches upon subsection 2. It appears that he has not touched upon subsection 3. Sir, with your permission, may I read out subsection 3 which is not too long so that I may ask a meaningful supplementary. Subsection 3 of section 160 reads as follows: 'If any person loiters in a public place or in the common part of any building and his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being, he (that is the loiterer) shall be guilty of an offence and shall be liable on conviction to imprisonment for two years.'* Sir, may I ask the Attorney General to comment on this particular subsection along the lines posed in my original question and secondly, to inform this Council whether

Government would be prepared to take another look at this subsection with a view either to deleting it altogether or to amending it so that it will be more objective and less subjective?

ATTORNEY GENERAL: — Sir, I was not previously aware of any critical pressures that were directed to the operation of this particular subsection. I would not expect magistrates to convict unless they were satisfied that on an objective view of the facts there was good cause for those others to be concerned for their safety. I am sure in the days when Mr. Peter WONG was in the Magistrates' Court making submissions, that argument found favour with the magistrates. However, Sir, I shall reflect on Mr. WONG's point and find out if this part of the section is much used in practice. If we have to consider any amendments to this section, Mr. WONG's concern would certainly be addressed at that time.

MR. MARTIN LEE:— *In view of recent criticisms of the law of loitering by eminent lawyers from both branches of the legal profession does the hon. and learned Attorney General think it desirable to refer this matter to the Law Reform Commission of which he is Chairman on the understanding that if he does so I will volunteer to chair the sub-committee? (laughter)*

ATTORNEY GENERAL: — I shall certainly take note of my learned friend's willingness to participate fully in the work of any sub-committee formed on the subject. My friend generalises about the views of the professions on this topic. There have been a number of different views which it would be impossible to accommodate, I think, even in a working group chaired by my friend. Sir, so for the moment, I think that the matters raised by the decision of the Court of Appeal are the most urgent for consideration in view of the fact that if the Privy Council decline to hear an appeal or decide an appeal against the Crown then it is inevitable that there would have to be changes in police procedures and, possible amendments to the law. I think it would be the duty of the Government to give urgent consideration to those matters. I think that the time it would take for a Law Reform Commission sub-committee to consider and come up with recommendations would leave the community too long at risk without proper preventive powers in the hands of the police.

MISS DUNN: — *Sir, does the Government have any statistics as to how many people, say, in 1984, who were stopped by the police on suspicion of loitering and who were then released immediately when they gave a true and reasonably explanation?*

ATTORNEY GENERAL: — Sir, I do not have precisely those figures at hand but I have heard that some 3 per cent, I think, of those who have been brought into police stations are immediately released as a result of consideration given by senior officers to their particular case. But that is not, I am sure, a complete answer to the question and I shall try to make enquiries from the police to find figures that would satisfy Miss DUNN'S question.

Handling of student problems by teachers

10. MRS. FAN asked: — *Teachers in secondary schools now face a variety of student problems ranging from personal difficulty to petty crime to triad connections. Can Government inform us whether there is a trend of increasing complexity in the problems that teachers have to handle now compared to five years ago, and what kind of assistance, training and facilities have Government offered to teachers in order that they can cope more successfully with the demanding school situation?*

SECRETARY FOR EDUCATION AND MANPOWER: — Sir, unfortunately, statistics on unruly and delinquent behaviour in secondary schools, have only been kept during the past three years. The great majority of instances relate to comparatively minor behavioural problems such as habitual lateness, failure to hand in homework and not bringing textbooks to school. Delinquent behaviour such as acts of physical violence, gambling, stealing and suspected involvement in triad activities accounted for approximately 10 per cent of total incidents recorded. Although there was a slight increase in both categories between 82-83 and 83-84, the present indications are that 84-85 will show some improvement. Clearly, it would be dangerous to speak of a trend on the basis of the data available so far.

The Education Department has been very conscious of the need to give teachers every possible assistance in dealing with unruly and delinquent pupils. A Standing Committee on Unruly and Delinquent Behaviour in Schools was established in 1982 under the chairmanship of the Deputy Director of Education to keep this matter under review and to consider constructive measures to assist teachers. Measures specifically related to training have included:

- (i) provision of regular seminars and workshops for serving heads and teachers jointly organised with other Government departments such as the police and the Social Welfare Department;
- (ii) introduction of counselling as a unit of study in the pre-service and in-service training courses for teachers in the colleges of education; and
- (iii) encouragement of teachers to attend the one-year extra mural course in school counselling and guidance run by the University of Hong Kong.

Other measures have included:

- (i) surveys on unruly and delinquent behaviour;
- (ii) provision of additional teachers for schools to provide remedial and guidance services;
- (iii) the issue of school circulars to inform teachers about how to handle suspected gang activities; and
- (iv) issue of pamphlets to schools and parents to inform them of the services available for helping children with behaviour problems.

In addition to the above, the education psychologists, educational counsellors and school inspectors of the Special Education Section of the Education Department also provide both remedial services for individual children with behaviour problems as well as advisory services for the teachers and parents concerned.

There is also a plan to set up a school support team to visit schools and to render on-site assistance to teachers responsible for guidance in schools. I hope to see this scheme launched on a pilot basis in September of next year.

MRS. FAN: — *Sir, does the Government recognise that family circumstances have a very significant effect on the behaviour of students and if so, what has the Government done to assist schools and teachers in strengthening the relationship between the parents and teachers; and does the Government have any plans to draw parents' attention to their responsibilities in this area in a co-ordinated manner?*

SECRETARY FOR EDUCATION AND MANPOWER: — I think, Sir, what we have to do is by public education. For example, the pamphlet I refer to was designed for parents as well as for teachers.

Legal aid to divorce and other civil cases

11. MR. TAI asked: — *Could this Council be informed of the following:*

- (a) number of*
 - (i) divorce cases and*
 - (ii) civil cases, other than divorce,**which involved the assistance of legal aid over the past five years; and*
- (b) whether the Government has any plan to set up an advisory body to help couples with marital problems and to assist them to being about reconciliation prior to the commencement of divorce proceedings?*

ATTORNEY GENERAL: — Sir, without searching individual case files, the precise numbers required by the first part of the question are not available. The best I can do is to give the number of legal aid certificates issued for matrimonial cases during the five-year period ending 31 December 1984 which was 8 453. The corresponding figure for other civil cases was 17 246.

Perhaps this is a question I should point out that the number of certificates issued for matrimonial proceedings includes not only divorce but also other family related proceedings.

The Government is, on the whole, satisfied with the present provision of counselling services and has no plan to set up an advisory body specially to deal with marital problems.

There are 22 family service centres run by the Social Welfare Department and 23 by voluntary agencies. These centres offer counselling and other forms of assistance to help families cope with problems, such as marital breakdowns.

In any event, the Matrimonial Causes Rules require the petitioner's solicitor in divorce cases to certify to the court whether or not he has discussed with his client the possibility of a reconciliation and given his client the names and addresses of persons qualified to assist in reconciliation. This underlines what I take to be good practice on the part of solicitors in Hong Kong, and I am assured that in the Legal Aid Department at least the prospects of reconciliation are always discussed with petitioners.

MR. TAI: — *Sir, could the Attorney General inform this Council whether to provide direct financial assistance in divorce proceedings would amount to a breach of public policy in view of the fact that legal aid is not available for divorce proceedings in the United Kingdom?*

ATTORNEY GENERAL: — *Sir, I think I must differ with my friend on the question of whether legal aid is available for divorce proceedings in the United Kingdom I understand that it is available for all contested cases both for divorce and for disputes on ancillary matters and it is also available for uncontested cases although in that event it probably covers no more than the proprietary advice since many uncontested divorces are no longer heard orally in court. So I would say in answer to the first part of the question, yes, it is right that legal aid should be available in divorce. Important rights are at stake. There should not be an access to the court for those who are rich but not for those who are poor. Justice requires that all families when there is a marital breakdown, have their various rights and obligations fairly dealt with.*

MR. PETER C. WONG: — *Sir, may I ask the Attorney General whether the Government is prepared to set up counselling services for people with extra-marital problems?*

ATTORNEY GENERAL: — *Sir, I would find it difficult to say that public policy so required. (laughter)*

Statement

Annual Report of the Hong Kong Productivity Council for the year ended 31 March 1985

MR. ALLEN LEE: — *Sir, among the various papers laid on the table of this Council today is the Annual Report of the Hong Kong Productivity Council for the year ending 31 March 1985.*

I am very pleased to report that for the year under review, the demand for the council's services continued to grow. The income derived from fees for services increased by 32 per cent, which for the fourth consecutive year, represents substantial real growth.

There was a sustained demand for the council's well-established core services. In training, the council organised 374 courses covering a wide range of specialised management and technical subjects. The number of participants exceeded 8 000. In consultancy, the council undertook 241 assignments assisting both local and overseas companies in either establishing new plant, or expanding and streamlining their manufacturing operations.

In addition to maintaining the momentum of its existing services, the council expanded the scope of its activities by taking a more active approach in technology transfer. Projects aimed at serving multiple users' requirements including the development of affordable computer aided design systems and the completion of the first stage of a comprehensive management information system for the garment industry. During the year, the council expanded its support facilities in various surface treatment technologies. There are over 1 000 local companies using the council's support facilities.

During the year, the council endorsed a 'unified approach concept' to technical support services. The intention of the unified approach was to rationalise the various recommendations made in the separate techno-economic studies under HKPC and to give early implementation to priority projects under one management so as to optimise the use of resources. The implementation of the unified approach and the adoption of an active approach to technology transfer requires a new legal framework which would provide for the enlargement of the powers and functions of the council. Subsequently an amendment Bill to the HKPC Ordinance was prepared and received the assent of this Council on 7 August 1985.

In recent years the continued vigorous growth of the council's activities and workforce has posed a recurrent problem concerning accommodation. We are only too aware that our increasing size and diversity implies that we are only able to serve most effectively especially in multi-disciplinary tasks if the majority of our professional staff and our facilities can be located on the same premises to maximise the utilisation of all our resources. Therefore we believe that only the availability of a special purpose building accommodating us in one site will help us to achieve the best results. Our gross rental accommodation has been and is growing to the point where we believe that the investment in our own building is viable. Consequently, we shall be asking the support of the Government to find and allocate an appropriate site for the construction of a special purpose building.

Government Business

Motions

Traffic Accident Victims (Assistance Fund) Ordinance

THE FINANCIAL SECRETARY moved the following motion: — That this Council approves the supplement to the Traffic Accident Victims Assistance Scheme.

He said: — Sir, I move the resolution standing in my name on the Order Paper.

The purpose of this supplement to the Traffic Accident Victims Assistance Scheme, or the 'TAVA' Scheme, is to use surplus funds which have accumulated in the existing TAVA Fund to make exgratia payments to persons who have suffered bodily injury and to the dependents of those who have died as a result of traffic accidents involving motor vehicles insured with five insurers who have become insolvent.

The accumulated surplus in the existing TAVA Fund is approximately \$190 million. This is far in excess of the amount required to meet payments under the existing TAVA Scheme, which provides only for immediate payments to traffic accident victims who suffer hardship in the aftermath of a traffic accident. The implementation of the supplementary scheme will not affect the operation of the existing scheme.

The full financial implications of the supplementary scheme cannot be determined now because the total number of claims will not be known until the scheme has been approved and publicised. It is, however, estimated that the total value of all claims will be between \$50 and \$70 million. The TAVA Fund can therefore absorb the cost of implementing the supplementary scheme without requiring an increase in the levies on vehicle and driving licenses or the annual Government contribution which finance it, for several years.

The supplementary scheme is designed to complement the agreement signed between the Government and the Motor Insurers' Bureau on 1 November. Under this agreement the Motor Insurers' Bureau has undertaken to establish and operate an Insolvency Fund Scheme to provide protection against the insolvency of any motor insurer which may occur *in the future*. Under the supplementary scheme financial protection is available to traffic accident victims adversely affected by insurers who are *now* insolvent. Both the Insolvency Fund Scheme and the supplementary scheme also provide for the reimbursement of insured persons who have already paid damages to a traffic accident victim as a result of the enforcement of a court judgement or an out-of-court settlement. Taken together, these two schemes provide a comprehensive package of financial protection and compensation for the unfortunate victims of traffic accidents who, through no fault of their own, are unable to recover any of the damages due to them because the insurer concerned has become insolvent.

Sir, I beg to move.

MR. CHAN KAM-CHUEN: — Sir, I rise to support the motion which if approved by this Council would relieve the long outstanding issue of unenforceable court judgments and settlements to victims (or their dependents) of traffic accidents due to the insolvency of five insurers. These payments should be made *gratia* out of the TAVAS Fund and should not create a precedent.

As there were some interesting views in our in-house meeting, a Legislative Council *ad hoc* group was formed to study them and discussions were held with the Secretary for Economic Services and his team who gave us useful information for reporting back to our colleagues. As a result, the hon. Maria TAM and I shall jointly have some points to make on this issue today.

Insuring bankruptcy

The supplementary scheme mentioned in the Financial Secretary's speech would mean that we are stepping into the unknown ground of insuring bankruptcy of business (in this case, insolvent insurance companies to be insured by motorists) and I would wonder where the list of business would end. Should insolvent bankers now turn around and tell their clients that 'Hard luck, my dear clients, you should have taken insurance for my bankruptcy before depositing money in my bank.'

Who should pay

In the last two cases of insolvent banks, depositors were fortunate in getting their money back from the public coffers. But would the motoring public ask why not pay the victims of these motor accidents from the public coffers?

It may be argued that depositors would take an investment risk due to the profitable return. Then the same argument may apply to traffic accident insurance as quite a large portion of motor vehicles are used in business or for making a profit.

If one looks up the Hong Kong Monthly Digest of Statistics, one may find that the list of licensed motor vehicles comprises motor tricycles, taxis, public buses, light buses, goods vehicles, special purpose vehicles and Government vehicles, all business-like and prosperous. Even motor cycles, private buses, private light buses and private cars are not so 'private'. The acid test is whether their expenses may be included in their owners business returns and deductible as expenditure for tax purposes.

The trend in the business circles nowadays is for the trade to ask its members to contribute to a fund which insured insolvent members and provide limited assurance to their clients. Some of these businesses are the share market, gold market and tourism. Business as a whole is now collectively contributing to the Protection of Wages in Insolvency Fund. So why should the insurance trade be the exception? As long as we legislate to govern the compulsory contribution, levy and proper operation of a fund, then whether the insurance companies charge it as expenditure and share it with their clients is another matter. It

would add to the image that the foundation of the insurance trade is on solid rocks.

Amalgamation

Motor vehicle owners or drivers are now paying for

- (1) third party insurance which is the minimum insurance required before one can put his car on the road;
- (2) additional 1 per cent of insurance premium for the First Fund Scheme which covers death or injuries caused by uninsured drivers or insured drivers who breach insurance policy conditions;
- (3) additional \$40 for the TAVAS Fund which provides immediate payments to hardship cases irrespective of liability; and
- (4) in future another 2.5 per cent of insurance premium for the supplementary scheme will provide protection for traffic accident victims when the insurance company becomes insolvent.

There is certainly room for improvement for streamlining or amalgamating these funds into one. This may result in savings beneficial to the insurer or insured.

Ceiling on claims

Although by the time the supplementary scheme is implemented, the chance of the motorist being sued into personal bankruptcy would be remote, but it would not provide ultimate and complete protection if we do not impose a ceiling on individual claim on death or total disability and a schedule scaling down the percentage of claim for injuries.

A motorist may plead mitigation that too large a claim would drive him into bankruptcy if the insurer defaults. This factor may not be taken into consideration when the bill is footed by the supplementary scheme. It is possible that an individual claim awarded could be so large that it would force a shaky insurance company into bankruptcy and the claim is then passed on to the supplementary fund wiping clean its resources. Then is it fair for the other victims to queue up and wait for the supplementary fund to be replenished gradually before their payment could be made. The TAVAS Fund does not have this Achilles heel and can therefore accumulate a large surplus.

Another reason for a ceiling is equality. If there is a ceiling provided by the employees compensation law for a worker killed by machinery and if another worker with similar wages, age and number of dependents and so on is awarded compensation by a court in a traffic accident which is many times larger than the former, then is it fair in the public's eyes?

On the other hand, there is a school of thought that complete protection of the guilty motorist by insurance may hamper efforts to promote greater road safety which should also be taken into consideration.

All these problems may require lengthy and careful study and consideration before solutions may be found. For the present, I do not wish to hinder the progress of Government business and above all I do not wish to prolong the anxieties and sufferings of the victims and their families.

With these reservations, Sir, I support the motion.

MISS TAM: — Sir, under the convenership of the hon. K. C. CHAN, an *ad hoc* group was set up to look into the rationale behind the proposal of this supplementary scheme which enables payment to be made out of the TAVAS Fund to victims of traffic accidents who were unable to obtain compensation or damages from five insurance companies which had gone into liquidation since 1980. This scheme is also described as the past Insolvency Fund Scheme.

Firstly we questioned why an exception has to be made for these five companies and what will happen to similar cases in the future; secondly we questioned why Government should come to the aid of private enterprises and allow motor insurance to have insolvency funds and whether we can differentiate motor insurance from other types of insurance where there is a mandatory requirement by law for a particular class of persons to take out insurance, for example, employers for employees; and thirdly, whether the payout method proposed is satisfactory.

After examining the facts laid before the *ad hoc* group by the Administration we have come to the following views:

- (1) This proposed exgratia payment out of the TAVAS Fund can only be justified as an 'one-off' exercise. We were assured by the Administration that after two and a half years of enforcement of more stringent prudential control over insurance companies under the Insurance Companies Ordinance 1983, and with further measures to follow, it is not envisaged that history will keep repeating itself. Also a future insolvency fund is being set up to deal with such contingencies. We have also considered that the doctrine of *caveat emptor* (buyers beware) must also be relevant here in that customers should choose a sound and not a cheap insurance company from which to purchase their policies and they must be responsible for the consequences of their own acts if they fail to pick the right one. And we know that those who had already paid (under court action) the victims should not be reimbursed as a matter of general concern. There are three cases under which the insurer had become bankrupt after paying the victims so there had been long hard arguments. We consider it is not equitable that this scheme should relieve some insured persons from their liability but not others and so finally, we accepted that those who had paid up can be reimbursed. It is the hardship caused to the victims that we wish to minimise and the financial commitment is a finite one, i.e. up to \$100 million. As there is a surplus of

about \$190 million in the TAVAS Fund, and we therefore finally decided to support the payment.

- (2) On the second issue the motor insurance industry has a long tradition in the operations of Motor Insurers' Bureau in overseas countries to set up funds to, so to speak, reinsure itself; and hence by traditional practice depart from the rest of the insurance policies which are mandatory under the law. We therefore do not consider it imperative that the TAVAS payment should fall in line with other mandatory insurance schemes and we agree that insurance funds, past or future, are acceptable.
- (3) Finally, under the Traffic Accident Victims (Assistance Fund) Ordinance (Chapter 229) the TAVAS Fund can only be paid to traffic accident victims, NOT the insured. Hence of the 135 cases where the insured person had paid, in part or in full, damages to the victims, these insured persons must *NOW* rely on the victims to claim payments from the fund and sign an undertaking to reimburse the insured. I hope that there will be ample publicity in calling for the co-operation of the victims because their co-operation is paramount to enable this proposal to achieve one of its objectives. We do not see fit to amend the TAVAF Ordinance and make it possible for payments to be made to the insured because this is a 'one-off' exercise and the lawful beneficiary to the TAVAS Fund can only be the victims.

In short, we accept the proposals before Council with the observation that prudential control over insurance companies must be made effective, that the basic principle of 'buyers beware' is a sound one and must be adhered to as a general rule and that we hope the relief we bring to the victims now would not be found necessary in other occasions.

I support the motion.

FINANCIAL SECRETARY: — Sir, I am grateful for the support that we have been offered by Mr. CHAN and Miss TAM. I am also grateful for the work that their committee had put into this unusual situation. I think the circumstances are quite unique. I think they are one-off, and I believe that the proposed solution, as is appropriate, oozes common sense.

Question put and agreed to.

PNEUMOCONIOSIS (COMPENSATION) ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion: — That the resolution made and passed by the Legislative Council on 3 December 1980 and published as Legal Notice No. 340 of 1980 be amended by deleting '0.2 *per cent*' in paragraphs (a) and (c) and substituting in each place the following —

'0.15 *per cent*'.

He said: — Sir, I move the motion standing in my name on the Order Paper.

The Pneumoconiosis Compensation Fund Board was established to administer the Pneumoconiosis Compensation Fund, which is financed by a levy of 0.2 per cent of the value of construction works with a value of at least \$1 million and of quarry products.

When the board began operation, it had to deal with an initially large number of claimants, many of whom were seriously incapacitated by pneumoconiosis. These claims have now been processed and, where appropriate, compensation has been paid. Claimants are now coming forward in smaller numbers and at an earlier stage of the disease. As a result, the board's expenditure on compensation has fallen over the last two years while its income has remained steady. This trend is likely to continue.

The board at present has a surplus balance of \$30 million. In order to correct the imbalance between income and expenditure the board has recommended to the Government that the rate of levy be reduced by 25 per cent, to 0.15 per cent.

The rate of levy imposed under section 35 of the Pneumoconiosis (Compensation) Ordinance may be altered by resolution of the Legislative Council. A draft resolution, which makes the recommended reduction, has been prepared accordingly.

Under section 36(3) of the Ordinance, the revised rate of levy would come into effect on 6 January 1986, that is 30 days after the publication in the *Gazette* if this resolution is passed.

Sir, I beg to move.

MR. HO: — Sir, since the establishment of the fund in 1981, there has been a steady and significant increase in the income of the fund. On the other hand, as a result of a decrease in the number of claimants and a reduction in the amount of compensation payable, the expenditure of the fund has been falling for the past two years. Naturally, this resulted in huge surpluses. In 1984 alone, the surplus itself is in the order of \$23 million and there are reasons to believe that this trend would continue. I believe that in a matter of three to four years, the interests on the surplus funds alone would be sufficient to meet the outgoings of the fund. If this is the case, I submit that it would no longer be meaningful to impose a levy on the value of construction works and quarry products produced and I am pleased that the Government has taken the initiative to introduce the resolution to reduce the rate of levy by 25 per cent next year. I urge that the same rate of reduction should be considered for subsequent years so that the rate of levy could be progressively reduced and eventually abolished altogether when the fund itself could generate sufficient resources to finance its prescribed functions.

Alternatively, if there are some compelling reasons to maintain the levy, I suggest that the ambit of the fund should be reviewed so as to allow the surplus

funds to be used for even more gainful purposes such as education, publicity and research in connection with the prevention of pneumoconiosis and if approved, will be a logical extension of the purpose for which the fund was set up. It is my sincere belief that the most important task is to reduce the incidence of the disease and that no momentary compensation is sufficient to alleviate the sufferings of the pneumoconiotics.

Sir, I fully realise that my proposals may carry with it certain implications that may have to be carefully examined. I would, however, like to think that the spirit of my proposals is no different from that of the motion before this Council and, that is, to improve the compensation scheme so as to better the welfare of the people working in the construction and quarry industries. It is with this common objective that I urge the Government to give the proposals its sympathetic consideration.

With this remarks, Sir, I support the motion.

SECRETARY FOR EDUCATION AND MANPOWER: — Sir, I welcome Mr. Ho's comments and would like to take this opportunity to clarify the Government's attitude towards the work of the Pneumoconiosis Compensation Fund Board.

The Employees' Compensation Ordinance requires compensation to be paid by an employer to an employee who is injured, or contracts an occupational disease, arising out of the course of his employment. The reasons why compensation for pneumoconiosis is not dealt with under the Employees' Compensation Ordinance are firstly, that the disease is specific to the quarry and construction industries and secondly, that it can take many years to become apparent and it is therefore difficult, if not impossible, for the liability of the payment of compensation to be attached to a particular employer. For these reasons it was decided to establish a statutory fund, financed by a levy on the quarry and construction industries, to be responsible for making payment of compensation to pneumoconiotics. In other respects the compensation of pneumoconiotics should accord with the principles adopted generally for employees' compensation.

It follows therefore that the levy on the quarry and construction industries which finances the work of the board should be kept under review to ensure that, with an appropriate safety margin, no more money is collected than is necessary to carry out the board's functions, most importantly the payment of compensation. The board now considers that it has more than enough money to carry out its functions and has, correctly, recommended to the Government that the rate of the levy be reduced.

As Mr. Ho is aware, the fund board, among its other functions, keeps a close watch on trends in its income and expenditure and I have no doubt that it will recommend to the Government a further reduction in the rate of levy if this seems desirable.

While sympathising with Mr. Ho's motives, I would be reluctant to consider an expansion of the functions of the fund board. Education, publicity and research in connection with occupational diseases are desirable activities, but they should be undertaken in a co-ordinated manner with other industrial safety and occupational health matters in such manner as resources and priorities allow. To use part of the levy on the construction and quarry industries for these purposes would entail treating this particular aspect of employees' compensation on a different basis from those areas covered by the Employees' Compensation Ordinance and would represent a significant departure from the principles on which employers in the quarry and construction industries were consulted before the establishment of the Pneumoconiosis Compensation Scheme in its present form in 1980. If the levy continues to generate surplus funds, the correct approach, in my view, is to reduce the rate of levy, not to expand the scope of the board's work.

Question put and agreed to.

ROAD TRAFFIC ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:—That the period for which there remains in force the limit on the total number of motor vehicles which may be registered as taxis, specified in paragraph 2 of the Taxis (Limitation on Number) Notice 1984 published as Legal Notice No. 395 of 1984, be extended to 17 July 1986.

He said:—Sir, I move the motion standing in my name on the Order Paper. This seeks, under section 23(3) of the Road Traffic Ordinance (Chapter 374), to extend the present limits on the number of motor vehicles which may be registered as taxis as specified in Legal Notice No. 395 of 1984 up to 17 July 1986.

The Taxis (Limitation on Number) Notice 1984 published as Legal Notice No. 395 of 1984 provides that the number of motor vehicles which may be registered as taxis is as follows: 14 000 for urban taxis, 2 638 for New Territories taxis and 40 in the case of Lantau taxis. The limits on the first two types of taxis were set by the Governor in Council on 17 July 1984 for a period of two years. As regards Lantau taxis, their utilisation rate at present does not call for any revision in the current limit on the number of vehicles.

A review of the limits on the number of taxis will be conducted during the first half of 1986 and recommendations will then be made on the limits to be applied after 17 July 1986. However, as Legal Notice No. 395 of 1984 remains in force only until 6 December 1985, a resolution under section 23(3) of the Road Traffic Ordinance is required to extend the current limits to 17 July 1986, and accordingly, Sir, I beg to move.

Question put and agreed to.

First Reading of Bills**INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1985****EMPLOYMENT (AMENDMENT) BILL 1985****COMPANIES (AMENDMENT) (NO. 2) BILL 1985****BANKRUPTCY (AMENDMENT) (NO. 2) BILL 1985****PEAK TRAMWAY (AMENDMENT) BILL 1985**

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills**INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1985**

THE FINANCIAL SECRETARY moved the second reading of:—'A Bill to amend the Insurance Companies Ordinance'.

He said:—Sir, I move that the Insurance Companies (Amendment) (No. 2) Bill 1985 be read the Second time.

The purpose of this Bill is to improve the effectiveness of measures which may be taken by the Insurance Authority to protect the interests of insurance policy holders or potential policy holders under section 35 of the Insurance Companies Ordinance.

Section 35 gives the Insurance Authority powers to impose requirements on an insurer in order to protect policy holders against the risk that the insurer may be unable to meet its liabilities. The usual action taken by the Insurance Authority under this section is the issue of a notice to an insurer requiring the company to make a deposit with a bank in the name of the Insurance Authority account for that particular company. The company is required to keep the deposit free of any charges, liens, encumbrances, equitable interests, and third party rights. If this requirement is breached and the deposit becomes encumbered, it ceases to be effective for the purpose for which it was set aside, that is as an unviolable fund to provide extra protection for policy holders.

Since the enactment of the Insurance Companies Ordinance 1983, there has been one case where a charge was created on a deposit which had been required by a notice issued under section 35. As a result, the deposit provided no protection for policy holders when the insurer concerned subsequently became insolvent.

Clause 2 of the Bill seeks to amend the Ordinance by adding a new section 35A to provide that if the Insurance Authority requires an insurer to make a bank deposit in the name of the Insurance Authority, to be held in trust for the insurer pursuant to a notice issued under section 35, any charge of whatever nature created over that deposit shall be void against all persons. Any deposit made is thus preserved as a potential source of extra protection for policy holders.

In order to hold the Insurance Authority accountable for its trusteeship of any deposits held by way of notice under section 35, it is proposed that the Insurance Authority shall prepare proper annual accounts of all deposits referred to in the new section 35A and submit a statement of those accounts to the Director of Audit for his examination. This is achieved by the addition of a new section 35B to the Ordinance.

Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

EMPLOYMENT (AMENDMENT) BILL 1985

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of:—'A Bill to amend the Employment Ordinance'.

He said:—Sir, I move that the Employment (Amendment) Bill 1985 be read a Second time.

The Employment (Amendment) Bill 1985 is intended to introduce a new part VB into the Employment Ordinance to require an employer to make, in certain circumstances, a long service payment to an employee whose contract of employment is terminated by dismissal. Since 1974 employees dismissed by reason of redundancy have been eligible for a severance payment from their employer, currently set at two thirds of a month's wages for each completed year of service. In the case of employees whose contract of employment is terminated under other circumstances, the Employment Ordinance merely requires the service of an agreed or statutory period of notice or the payment by the employer of wages in lieu of such notice. This disparity in the treatment of a dismissed employee has been often criticised as unfair, and especially unfair to ageing employees dismissed through no fault of their own who have served the same employer for several decades. Many older employees after dismissal find it especially difficult to secure alternative employment, in particular manual workers.

The Labour Department has for some time been considering ways of giving greater security to elderly long service employees. Unfair dismissal legislation has been considered but the experience of other countries, in particular the United Kingdom, in this field of legislation, has shown that it would be extremely difficult to define what constituted unfair or unreasonable dismissal and that the scheme would require the establishment of a new tribunal or an expansion of the existing Labour Tribunal to handle the inevitable disputes which would arise if legislation of this kind were introduced.

Instead, the present long service payment proposals have been developed as a practical alternative to unfair dismissal legislation, based on the premise that the dismissal of an elderly long service employee without some form of provision for his future is itself unreasonable. A statutory requirement for an employer to make a payment to a dismissed employee, based on his age and length of service, would achieve much the same result as an employee's entitlement to monetary compensation under unfair dismissal legislation while avoiding the need for complex and expensive procedures to establish that the dismissal had been unreasonable in the circumstances.

The long service payment proposals put forward in this Employment (Amendment) Bill are aimed at the older employee and take into account his length of service as well as his age. An employee aged 40 or less must have at least 10 years' service to qualify for a long service payment. Above this age, the minimum qualifying service is progressively reduced so that an employee aged 45 or more requires only five years' service to qualify. The rationale for progressively reducing the period of qualifying service after the age of 40 is that this age is generally considered to be the peak of an employee's working life beyond which he will find it increasingly difficult to obtain alternative employment. In the case of a manual worker it is also the age beyond which his energy and productivity may become harder to maintain. It is also felt that a younger employee who has spent 10 of the most productive years of his life with the same employer also deserves recognition for his loyalty, though because the proposals are primarily aimed at more elderly employees, employees younger than 40 will receive a proportion of the statutory payment. It is proposed, as in the case of severance pay, that the amount of the payment should be two thirds of a month's wage for each year of service, up to a maximum of 12 months' wages.

It is proposed that a payment thus calculated will be reduced by a quarter in the case of an employee aged 36 or more but less than 40, and by a half in the case of an employee aged less than 36. Such employees should have little difficulty in finding alternative employment and therefore have little real need of the protection afforded by this Bill.

The employer will be required to make the long service payment, together with other sums due such as arrears of wages or wages in lieu of notice, as soon as possible after an employee's contract of employment is terminated by him,

and in any case not later than seven days after the date of termination, and must give him a written statement indicating how the amount has been calculated.

Following the practice adopted when severance pay was introduced, it is proposed to set a cut-off date for reckonable services to limit the initial liability on employers. In the first year after the enactment of the Bill, the cut-off date will be set in 1980, six years before the commencement date of the Bill. In each of the following three years the cut-off date will be moved back by one year so that in 1989 it will come to rest in 1977.

Like any other piece of social legislation involving the interests of both employers and employees, the long service payment scheme represents a workable compromise between what is desirable and what is practicable. The scheme has to be both acceptable to employees and at the same time affordable to employers at large. The present proposals are the result of a prolonged discussion between representatives of both employers and employees in the Labour Advisory Board and are acceptable to both sides.

Sir, I beg to move the debate on this motion be adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

COMPANIES (AMENDMENT) (NO. 2) BILL 1985

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of:—'A Bill to amend the Companies Ordinance'.

He said:—Sir, I rise to move the Companies (Amendment) (No. 2) Bill 1985. This Bill is connected with the Employment (Amendment) Bill 1985 and accords to a long service payment the same preferential status as a severance payment in a winding-up. Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

BANKRUPTCY (AMENDMENT) (NO. 2) BILL 1985

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of:—'A Bill to amend the Bankruptcy Ordinance'.

He said:—Sir, I rise to move the Bankruptcy (Amendment) (No. 2) Bill 1985. This Bill parallels the provisions of the Companies (Amendment) (No. 2) Bill 1985 by according preferential status to a long service payment in a bankruptcy.

Sir, I move that the debate on this motion be adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

PEAK TRAMWAY (AMENDMENT) BILL 1985

SECRETARY FOR TRANSPORT moved the Second Reading of:—'A Bill to amend the Peak Tramway Ordinance'.

He said:—Sir, I move the Second Reading of the Peak Tramway (Amendment) Bill 1985.

The main purpose of the Bill is to deregulate fares on the peak tram and to replace the existing annual permit fee system with a long-term right for the Peak Tramway Company to use Government land for operating the tramway.

The peak tram is no longer an essential form of public transport these days. The Peak area is now well served by buses and minibuses at fares substantially less than the peak tram, and few people rely on the peak tram for commuting. As the peak tramway is therefore now largely a recreational facility, fare control by Government is no longer justified.

In order to protect the interests of the small number of people who do use the peak tramway for commuting, clause 8 of the Bill provides that the monthly ticket issued by the company is not to exceed 25 times the lowest fare for a full distance single journey. It has been suggested to me by Unofficial Members of this Council that the Bill should be strengthened by imposing a firm obligation on the company to issue such monthly tickets. The point is well taken and I shall move an amendment to new section 22(2) to this effect at the committee stage.

Under section 21 of the existing Ordinance, the Peak Tramway Company is required to pay a permit fee annually for its use of Government land to operate the system. In considering the company's fare increase application in 1982, the Governor in Council agreed in principle to waive the royalty element in the permit fee. Instead of seeking the approval of this Council every year to deduct a certain amount from the permit fee to offset royalty, it is now proposed that a new system should be introduced to charge the company a commercial rent for using Government land to operate the tramway for 20 years. Accordingly, clause 2 of the Bill gives the company a right to operate the tramway for 20 years with effect from 1 January 1984, subject to the provisions of the Peak Tramway Ordinance and the payment of a premium of \$2.6 million.

The opportunity is taken to update various obsolete parts of the Ordinance and the only significant amendment here is the deletion of the provision of section 11(1) relating to the power of Governor in Council to purchase the company after expiration of 28 years from the time when the company was empowered to construct the tramway and every seven years thereafter. Such a provision is incompatible with the proposed 20-year right to use Government land for running the tramway.

The above package of measures serves to reflect the present status of the peak tram as a recreational facility and it streamlines the administrative arrangement for the peak tram to continue its operation as a commercial undertaking.

Sir, I beg to move that the debate on this be adjourned.

Motion made. That the debate on the Second Reading of the Bill be adjourned.

Question put and agreed to.

UNOFFICIAL MEMBER'S MOTION

Appointment of a Select Committee

MR. J. J. SWAINE moved the following motion:—

'That a select committee be appointed:

- (a) to consider the administration of the Hong Kong War Memorial Fund established under the Hong Kong War Memorial Fund Ordinance (Chapter 1026) and to make recommendations on the future administration of the fund having regard to the relevant legislation and the interests of the beneficiaries of the fund and the public interest; and
- (b) to report on the appropriate measures to be taken with a view to implementing those recommendations.'

He said:—Sir, I rise to move the motion standing in my name on the Order Paper.

The Hong Kong War Memorial Fund was established by Ordinance in 1947 to ensure that all who served in defence of Hong Kong during the last War (including those who became prisoners of war) and who were incapacitated and in need would be adequately provided for. Assistance is also provided to their dependants. The fund is administered by a statutory committee appointed by the Governor and comprises respected senior members of the community who had war experience in Hong Kong or elsewhere plus a representative of the Secretary for Health and Welfare.

Because of an increased annual expenditure since 1979 caused by more beneficiaries, the fund's assets have neared depletion and this year Finance Committee has been asked to approve supplementary provision to meet expenditure from the fund. The Government has guaranteed that the fund would always have the means to pay but I believe that a select committee of this Council can best make an independent assessment of the future arrangements of the fund which would be fair both to the public and to the prisoners of war and other beneficiaries before Finance Committee is asked to vote further funds for its continuance.

Sir, I beg to move.

SECRETARY FOR HEALTH AND WELFARE:—Sir, the Hong Kong War Memorial Fund exists to provide assistance primarily to members of the volunteer and auxiliary units who were wounded in action or injured in service or who were prisoners of war, and who are wholly or partially incapacitated from earning a living. Assistance is given to eligible members and their dependants and also to the dependants of members who were killed in action.

The fund was set up in 1947 and consisted originally of public donations and a matching contribution from the Government. Further donations, Government contributions and investment income have sustained the fund over the years. In 1979 the Finance Committee of this Council agreed to underwrite the fund in order to ensure that there would always be money available to meet its objects and, in April this year, when it had become apparent that the fund was about to run out of money, the approval of Finance Committee was sought for funds to enable the War Memorial Fund to continue to meet its commitments.

As it is 38 years since the fund was set up, and as it is now to be fully funded from the general revenue, I agree with Mr. SWAINE that this is an appropriate time for an independent examination to determine future arrangement for the fund which would be fair to the public and to the beneficiaries. Government agrees that the most appropriate way of doing this is by means of a select committee of this Council; I therefore have much pleasure in supporting the motion.

Question put and agreed to.

Adjournment

Motion made. That this Council do now adjourn—THE ATTORNEY GENERAL.

4.30 p.m.

HIS EXCELLENCY THE PRESIDENT:—Ten Members have given notice of their intention to speak. Although I am sure they will be concise, I do not think we

can finish in a half-hour. So I propose to exercise my discretion under Standing Orders 9(7) and 9(8) to allow Members such time as is necessary to complete their speeches, and such time as is then necessary for the Official Member to reply to those speeches, before putting the question on the adjournment.

THE WHITE PAPER ON THE DRAFT HONG KONG (BRITISH NATIONALITY) ORDER 1986

MR. SWAINE:—Sir, on 17 October this year, the White Paper on the Draft Hong Kong (British Nationality) Order 1986 was published concurrently in the United Kingdom and Hong Kong to enable public debate to take place before the draft becomes law by enactment in the United Kingdom.

The Order in Council will be passed under the enabling provisions of the Hong Kong Act 1985, which was in turn passed to give effect to the United Kingdom position under the Joint Declaration on the future of Hong Kong. So the draft Order deals with mechanics not principle.

Under the United Kingdom memorandum attached to the Joint Declaration, all Hong Kong BDTCs will lose that status as from 1 July 1997 when British sovereignty over Hong Kong comes to an end, but they will be entitled to retain 'an appropriate status' which, without conferring the right of abode in the United Kingdom will entitle them to continue to use British passports.

That new status will be created by the Order in Council, which provides in paragraph 4 that on and after 1 July 1987 there shall be a new form of British nationality, the holders of which shall be known as British Nationals (Overseas). All Hong Kong BDTCs shall be entitled as from 1 July 1987 and before 1 July 1997 to be registered as a British National (Overseas) and to hold such a passport.

It will be an odd status. As from 1 July 1997, the British National (Overseas) passport will be a travel document without a home of its own. It does not carry the right of abode in the United Kingdom and will not carry any right of abode in Hong Kong because that will be governed by annex I article XIV of the Joint Declaration. Right of abode in Hong Kong will then be evidenced by a permanent identity card to be issued by the Hong Kong Special Administrative Region Government.

The dilemma that this poses has just been resolved by the news that Britain and China have agreed in principle to the form of endorsement on the BN(O) passport that the holder possesses a Hong Kong permanent identity card which states the right of abode in Hong Kong. It remains for Britain now to ensure the international acceptability of the new passport with this endorsement: ease of travel is, of course, essential to maintain Hong Kong's prosperity and way of life.

There is one facet of international acceptability which lies entirely within the power of the British Government. Surely it is not beyond the wit of man to

devise a system of recognition of this BN(O) passport so that it is automatically good for travel to the United Kingdom without the need for specific permission on each occasion or for a certificate of entry. I had suggested an automatic permission to land endorsement in my speech during the policy debate one week ago. If that presents a technical difficulty (as to which I am not convinced) then could not another method be devised which would be technically acceptable and which would obviate the procedures under the Immigration Rules before leave to enter is given? The important thing is for Britain to set the lead in giving to the new passport the stamp of international acceptability. Britain, I fear, is rapidly losing the battle for the minds and hearts of Hong Kong people: it is not too late even now for some measure of goodwill to be regained.

The only other feature of this draft Order in Council which I ought to address is paragraph 6 which provides for ex-BDTCs to become British overseas citizens as from 1 July 1997 if they would otherwise become stateless, and for this status of British overseas citizen to be available for two generations thereafter, with a view to reducing statelessness. The status of BOC is even more nebulous than that of BN(O), and further removed from identification with a home. It could result in serious anomalies and injustices with regard to non-Chinese British nationals, a theme which other of my Unofficial colleagues will develop.

Sir, I shall end by making a special plea for the ex-servicemen of Hong Kong because I believe none deserve it more. They fought in defence of Hong Kong and in other theatres of war for King and Country during the Second World War. Britain and Hong Kong owe them a debt of gratitude which must be honoured. Their number is about 400 and is dwindling. They fought in defence of a system which will run its course in Hong Kong in 12 years. Britain must therefore offer them a home. Nothing less will do. The way is provided by the British Nationality Act of 1981 itself. Under section 4 the Home Secretary has discretion to register a Hong Kong BDTC as a British citizen and to waive the residential requirements if he has been in Crown service, including military service. I appeal to the British Government to make it known that it will sympathetically consider all such applications made by our ex-servicemen.

DR. HO:—Sir, this is the second occasion in a week at which I speak on this White Paper on the Draft Hong Kong (British Nationality) Order. In fact, if my memory does not fail me, today's Adjournment debate is the third within a relatively short time span of 18 months at which this Council discuss at length ways to facilitate the travel of Hong Kong people between now and 1 July 1997 and more importantly thereafter. This of course reflects a lot on the importance which not only Members of this Council but also the public attach to this subject of a very practical nature: a subject which is indeed very close to the hearts of the people of Hong Kong.

A number of events have taken place since the conclusion of the Sino-British negotiations on our future and this included the enactment of the enabling legislation giving rise to the Order in Council before us this afternoon in April this year. Many of the arguments which will be brought up by Members this afternoon might have been well rehearsed before you, Sir, or in other place; yet most of them are worth repeating and should in fact be repeated loud and clear so that the wishes of the people of Hong Kong would stand no chance of being overlooked. Whereas my colleagues may wish to deal with other aspects, I would rather confine myself to the practical use of the BN(O) passport as a travel document for the eligible Hong Kong residents in the 10 years leading up to 1997 and the 50 years that follow.

I recall during the debate of the Hong Kong Bill in the House of Commons in early February this year, the then Minister of State, Mr. Richard LUCE, reaffirmed that:

'a statement to that effect (that BN(O) passports will state the right of abode in Hong Kong) will be entered by the Government with respect to the period before 1997 as laid down in section XIV of annex I to the Joint Declaration. After 1997, we shall be able to state that the holder of the passport holds a permanent SAR identity card which is evidence of his right of abode in the SAR. The Government will discuss with the Chinese authorities the wording of the statement to be included in the BN(O) passports.'

This I consider is a clear undertaking by Her Majesty's Government that a practical solution to the stating of the right of abode in Hong Kong on BN(O) passports will be sought with the Chinese authorities which in the end would not necessitate the carrying of an additional identification document by the holders of such passport when travelling abroad. The wording of the endorsement announced this morning and reported in the press has not fully addressed this particular point. I therefore must stress the new passport would *only* be acceptable if the endorsement could remove all doubts of immigration authorities in third countries regarding the returnability to Hong Kong of such passport holders without the need to produce additional identification document.

The second point which I should like to raise, and which I mentioned briefly during the policy debate, is the ease of travel afforded by the proposed BN(O) passports as compared to the present BDTC passports held by Hong Kong residents. It was not until the question of freedom of travel was highlighted in this Council over a year ago that the public in general realised the degree of convenience offered by the present BDTC passports. A holder of such a passport can go to over 70 countries without the need to apply for a visa or entry permit. This of course is the result of years of hardwork of both the United Kingdom and the Hong Kong Governments. From our standpoint, naturally, we would like to see these facilities of entry being retained in future when we

use the new BN(O) passport; otherwise may I ask what is the point of opting for the new passport then? Her Majesty's Government has repeatedly stated that it will do all that it can to secure, for holders of the new-style British passport, the same access to other countries as that enjoyed at present by holders of BDTC passports. Again I take this beyond all doubt to be a firm commitment on the part of the United Kingdom Government to make the strongest representation to third countries, to explain to them this relatively complex arrangement so as to establish international recognition for the new style British passport. Only if the BN(O) passport were accepted by third countries soon after its issuance by the Hong Kong Government would eligible residents in Hong Kong be encouraged to come forward to apply for it. I am afraid nothing short of that would do. Could we be enlightened then as regards how and what the United Kingdom Government will do to promote the acceptance of BN(O) passport in a more detailed manner?

The final point which I will touch on this afternoon is also an area of prime importance. I take it as a fair reading of the Sino-British Joint Declaration and the associated memorandum that it is the intention of the two signatory sovereign states that taking into the historical background of Hong Kong, residents who at present are entitled to hold BDTC passports will in future be entitled to use BN(O) passports as a travelling document in addition to the one issued by the future Hong Kong SAR Government. It would definitely help to dispel unnecessary suspicion concerning the entitlement to concurrently hold both types of passports if this could be confirmed in due course by both the United Kingdom and the Chinese Governments. This, I believe, will go a long way in easing the minds of those eligible to take up the new style British passports.

MR. ALLEN LEE:—Sir, I am a holder of the Hong Kong Certificate of Identity, therefore I can claim that I am not speaking for my personal interest. This afternoon my colleagues will speak on other issues in relation to the British Nationality Order. I only want to concentrate on the issue of ethnic minorities in Hong Kong.

Since the publication of the Order, there are considerable concerns among the minorities in Hong Kong that they will become stateless. Even though they are offered British overseas citizenship (BOC) after 1 July 1997, and provisions would be made for their children and grandchildren born after 1997 for BOC status, there is a distinct possibility that the third generation of the minority group will become stateless.

The Indian community made representation to UMELCO and expressed strongly even if HMG obtains the agreement from the Chinese Government that their future descendants can apply for Chinese citizenship, they will be reluctant, at this point in time, to commit themselves on acceptance.

Sir, no one should become stateless during the transfer of sovereignty nor in the future. We are living in a free world. These minorities in Hong Kong choose

to become British nationals because they have faith in the British Government. It is unethical for the British Government to turn her back and wash her hands clean with regard to less than 10 000 minorities in this category. One argument that I have heard is that even for a British citizen living outside of Britain for two generations, the third generation will lose British citizenship; but the difference is that the British citizen has the freedom of choice. In the case of the minorities in Hong Kong, they do not have this freedom of choice. Therefore, I strongly urge the British Government on the grounds that they are non-Chinese ethnic minorities, to offer them British citizenship or British dependent territory citizenship in another British dependent territory. Another argument is that if Britain offers British citizenship or BDTC status to the minorities in Hong Kong, what about the ethnic Chinese BDTC passport holders? What would be their reaction? I have talked to quite a few Chinese BDTC passport holders, I can safely say that they have no objection to the minorities obtaining British citizenship or retaining the BDTC status; in fact, they wish the minorities the best of luck.

Sir, in my view this is a British responsibility, failing to take up this responsibility is unthinkable. I hope members of the British Parliament consider this case carefully.

MR. STEPHEN CHEONG:—Sir, I hope I am not speaking out of turn but if I do, may I ask for your indulgence and allow me to make a plea to those MPs taking part in the debate in Westminster on the proposed BN(O) Order. I plead that they be totally honest, not only with their own conscience and honour but also with us when taking part in the debate.

Most in Hong Kong, I am quite sure, fully recognise the stark reality that it will be a miracle if our views are ever heeded by those parliamentarians taking part in the debate involving this type of issues. That is probably why there has not been much excitement over this issue as it should have been since the BN(O) was supposed to be created for only 2.5 million British subjects of Hong Kong origin. In a way, Britain must be grateful for the calm and gentlemanly way in which the 2.5 million Hong Kong British subjects have reacted towards the whole saga of the successive British Immigration or Nationality Acts. Throughout the past 20 odd years, we have seen the rights of British subjects in Hong Kong eroded by each successive Immigration or Nationality Act that came into force in 1962, in 1971 and finally in 1981, when the last nail was slipped through right under our nose.

Sir, I am of course too young to recall what had happened in 1962 and 1971. but I recall vividly the events of 1981. When the then UMELCO Members anxiously and repeatedly sought clarifications on the rationale behind the need to split British nationals into different classes and introduce the new nomenclature for those British subjects residing in Hong Kong and other territories, we were repeatedly assured then of the purity of intention of the 1981 British Nationality Act and that there were really no sinister motives behind the

change. Further, when UMELCO Members learnt of the concessions about to be requested by Members of the Upper House for the citizens of the Gibraltar and Falkland Islands, we acted swiftly and started to lobby a number of peers in the House of Lords on behalf of Hong Kong. We were unanimous in deciding to send a delegation to London at our own expense albeit at the last stages to further buttress our lobbying efforts. Regrettably, our efforts were thwarted by people who were supposedly our friends through their skilful deployment of stalling tactics. We were advised by people whom we implicitly trust that the House of Lords will pass the Bill with a wide margin so that any further moves made by Hong Kong or indeed by any other places like Gibraltar and Falkland Islands would not have any chance of succeeding. Well, the British Government only managed to secure the miniscule margin of two votes and to add insult to injury the Gibraltarians and the Falklanders succeeded in making their seemingly impossible dreams come true. To this date, Sir, sadly, I venture to postulate that practically all of us who were UMELCO Members then still have the nagging feeling of unease in our minds. The one question that will remain forever unanswered is that could we have turned the tide and swing the marginal vote if only we did not listen to the advice of those people whose words and assessments we placed so much trust on.

Sir, it is of course pointless to dwell on the past and moot on what might have been. We should not harbour any grudges for we do understand now the reasons why the British subjects in Hong Kong were singled out for different treatment. Although we may feel unhappy about what had happened but we should be compassionate enough to accept the reality with dignity. We should understand that the British Government has to take steps to protect the interests of their country for it would have been a nightmare for any Government in Britain to be exposed to the possibility, however slight, that the already heavily burdened social security system might well be further stretched. The thought of absorbing even 20 per cent of the 2.5 million possible extra participants in the British social security system would certainly send chills down the spines of a lot of ill-informed United Kingdom citizens. Nevertheless we would have been much happier if somehow those British politicians could be slightly more honest and told us the truth right from the start. It is with this thought in mind that I wish to plea to whoever that takes part in the debate in Westminster to rise to the occasion this time around; to do some hard soul-searching and try to take heed of our concerns; listen attentively to our suggestions and the rationale behind our suggestions; and finally persuade the United Kingdom Government to adopt our proposals. It is with this background that I venture to suggest three areas which they might wish to take into consideration in their future deliberations and debate.

First, please take heed of the request of the small number (less than 10 000) of British subjects of Hong Kong who are not ethnic Chinese. Their fears about possibly becoming stateless persons after 1997 should be viewed and considered with a high degree of understanding and sympathy. They do deserve special

consideration if only because the plight they may possibly be in is, in my view, a product of the legacy of the Empire that was. Many of the forefathers of our non-Chinese friends might very well have been required to work and eventually settled in Hong Kong as they were brought in by their then colonial masters in order to perform the necessary pioneering work in Hong Kong for the glory of the then Empire. The uniqueness of their case must rank equally with, if not higher than, the case of the Gibraltarians and Falklanders for it is the British Government that decided to return Hong Kong to China. If Britain chooses to concede to the citizens of Gibraltar and Falkland Islands, I could not see any reason why they should not give special consideration for those people who are not ethnic Chinese in Hong Kong. After all the number is much less than those of the Gibraltarians. If their requests were to be rejected, then they should at least be entitled to an honest explanation for, without it, the decision of rejection could easily be looked upon as one that carries tints of racialism. It would not serve any useful purpose to continue to try to pull wools over the eyes of the gentle flock.

Secondly, the BN(O) Order was hailed by MPs to be for the benefit of Hong Kong British subjects and that such an Order is considered to be a manifestation of the goodwill of the British political machine in their contribution towards Hong Kong's stability and prosperity after 1997. Sir, I would not wish to comment any further except to hope that successive Government of Britain will continue to commit to the letter and spirit of the BN(O) Order and would undertake to make all the necessary international negotiations for the complete compatibility of this document with the BDTC passport for international travelling now and in the ensuing years after 1997 so that this document will not be made a mockery thus effectively degenerating it into a useless and meaningless document.

Finally, Sir, the question on BN(O) passport is not whether it is acceptable to third countries but whether it is exempted by these countries from visa requirements. I therefore urge that the British Parliament considers seriously and objectively the suggestions made by the hon. John SWAINE that the BN(O) document be stamped with permission to land in Britain so that Britain could be seen to take the lead in upholding international confidence in the fact that the BN(O) document is indeed a totally effective and convenient travel document in facilitating our businessmen and tourists. As accessibility to international market places by our businessmen is of vital importance to our future prosperity, such initiatives made by Britain to ensure the ease of our access would certainly demonstrate that Britain is being serious in her declaration to contribute towards Hong Kong's stability and prosperity.

MRS. CHOW:—Sir, when I last spoke in this Council on the BN(O) issue in February this year, I called for clear endorsement on all BN(O) passports stating categorically the right of abode in Hong Kong enjoyed by holders so as to facilitate the acceptance of the document by third countries.

This point was taken up by the then Minister of State, Mr. Richard LUCE when he informed the House of Commons during the debate of the Hong Kong Bill on 6 February 1985. Referring to the wording of the statement to be included in the BN(O) passport, he said:

'The aim is to ensure that an individual need use his passport—and not have to supply an identity card—only to satisfy immigration authorities in third countries that he has the right of abode in Hong Kong.'

Today, we learnt that the United Kingdom and China had agreed in the last round of talks at the Joint Liaison Group that the endorsement on the BN(O) passports will read:

'The holder of this passport has Hong Kong permanent identity card No. XYZ which states that the holder has the right of abode in Hong Kong.'

This differs from the existing endorsement in BDTC passports, 'The holder has the right of abode in Hong Kong'. In my view, the mention of the permanent Hong Kong identity card in the BN(O) passport may lead to unnecessary suspicion of immigration officials in third countries.

There may be two stages to the problem.

Before 1 July 1997, there are British passports issued by the United Kingdom and Hong Kong endorsed with the right of abode in Hong Kong. There are also British passports issued by the United Kingdom and Hong Kong endorsed with the right to land. The introduction of the BN(O) passports into circulation with yet another wording of endorsement will only add to the confusion that already exists, and prompt more question by immigration officials elsewhere, not the least of which would be a demand to see the identity card. Wouldn't this defeat the aims set for by the British Government as voiced by Mr. LUCE?

After 1 July 1997 BN(O) passport holders may be faced with immigration authorities who may not be familiar with the details contained in the Sino-British Joint Declaration, in which case they may assume the unusual arrangement of nationals of one country needing identity cards issued by another to prove a right of abode might mean these holders either have difficulty or are reluctant to return.

I urge therefore in order to facilitate the ease of travel, and so as not to place BN(O)s in a worse off position to BDTCs that Britain and China agree to the administrative practice of putting a certificate of right of abode as advocated by the United Kingdom Joint Council for the Welfare of Immigrants in the BN(O) passports before and after 1997.

The BDTC passport requires no visa to enter about 70 countries. It is not at all sure whether the visa abolition agreements applicable to BDTC passports will be equally valid for BN(O) passports. Unless and until Britain can assure Hong Kong by the successful conclusion of negotiation with at least the countries with which we presently have visa abolition agreements, the BN(O)

passports will certainly be less attractive to BDTCs. Although Britain may not be in a position to predict the outcome of such negotiation. Hong Kong must be told when such talks will start, and by when they are expected to conclude. BDTCs who are eligible for BN(O) passports have a right to know exactly what the new document requires and exempts.

If they are kept in a state of uncertainty, or if their present convenience is eroded, there is every possibility they will postpone the application for the BN(O) passports until doubts are removed, in which case it would defeat the whole purpose of providing ample lead time to allow familiarisation of these new documents.

Before I close, Sir, allow me to clarify my understanding of articles 3 and 4 of the draft order.

A BDTC ceases to be one on 1 July 1997 and not before, in spite of the passage of the Hong Kong Order.

On 1 July 1987 onwards a BDTC is eligible to be registered as a BN(O). This is an option open to him. In other words it is within his choice to opt for a BDTC passport whether it is a first application or renewal until immediately before 1 July 1997, or if he so wish, he can be registered as a BN(O) and to hold a BN(O) passport.

Sir, at this point, I would like to join my other colleagues who are speaking at length on the fate of the ethnic minority in Hong Kong to call on the United Kingdom Government to make more satisfactory arrangements for this group, then the hitherto offer of a BN(O) passport which represents neither citizenship nor right of abode to these non-Chinese who have served the British for generations.

Finally, Sir, I wish to associate myself with Mr. J. J. SWAINE'S call for the automatic permission to land in the United Kingdom for every BN(O) passport holder. I believe such a move not only removes the uncertainty that surrounds the existing optional certificate of entry, but will also help Britain tremendously in reaching visa abolition agreements for Hong Kong with third countries.

MR. CHEONG-LEEN:—Sir, I wish to express concern that when the new BN(O) passport is issued as from 1 July 1987, valid for 10 years until 30 June 1997, it may not have the same acceptance as the BDTC type of passport.

I presume that it is intended by the British Government that a person who holds a BN(O) passport after 1 July 1987 will retain his BDTC status until 30 June 1997, unless he renounces it or is deprived (presumably for valid reasons) of that status before that date.

We in Hong Kong are naturally very concerned as to whether the British Government will make every effort to continuously ensure that the BN(O) passport will be given equal status and recognition by Commonwealth and

other countries and territories as are currently given to BDTC passports held by Hong Kong people.

Another point on which I would seek assurance is that if after issuance of a BN(O) passport, the holder is dissatisfied with the acceptability of that passport, he should have the right to change back his BN(O) passport for a BDTC passport, with expiry date as of 30 June 1997.

Also to be clarified is whether the validity of a BN(O) passport issued say in 1990 will be for 10 years after date of issuance or whether it would be only up to 30 June 1997. If the validity date is beyond 1997, would the holder still be required to register for BN(O) status before 30 June 1997?

MR. CLYDESDALE:—Sir, I rise to express concern about the proposals in the white paper regarding future nationality of the non-Chinese ethnic minority population of Hong Kong who are British Dependent Territory citizens (BDTCs). I am particularly concerned about the potentially serious problem faced by those BDTCs who are members of the Hong Kong Indian ethnic community since they are the largest portion of the overall group.

A substantial number of the constituent companies in the functional constituency I represent are owned or controlled by Indians in this category. I am therefore well aware of the contribution of the Indian community to the Hong Kong economy over a very long period of time. I believe that the traders represented in the Indian ethnic minority, a high proportion of the whole, are responsible for at least 10 per cent of Hong Kong's external trade by value and for a very much larger percentage of our trade with certain countries. The Indian community is traditionally law abiding and a strong supporter of local social and charitable developments. Many Indians living in Hong Kong were in fact born here as were their parents and grandparents. It is also worth pointing out that a high proportion of the original Indian immigrants were brought here by their British employers. Some were in the military, some in the police and others were civil servants.

Of the less than 10 000 or so non-Chinese BDTCs here, some 6 000 are Indians, the majority of whom are from families which were settled here before Indian independence in 1947. They came for a variety of reasons and not solely for economic reasons. They came, among other things, because Hong Kong was British and because they clearly believed it would remain so. Over the past century they have been part and parcel of our development as a British territory, one which has become an economic lesson to the rest of the world.

The British Government, and indeed the Hong Kong Government, cannot evade direct moral responsibility for this group of citizens and must respect their wish to remain British and to be given the right of abode in Britain or a British territory with the right of travel on a British or relevant BDTC passport. They were after all British subjects before the British Nationality Act 1948 and, after that Act, were in many cases required to re-affirm allegiance to Britain.

Since many do not even speak the Indian language they do not consider themselves as Indian nationals nor do they wish to emigrate to India, which would not be an easy matter in any case, nor, indeed, do they wish to become Chinese citizens at some point after 1997. Their historical connection has been with the British and the British should now be prepared to look after their interests.

Turning now from the emotional to the technical, the position, as I understand it, is that, after 30 June 1997, in common with their Chinese counterparts, non-Chinese BDTCs will become British Nationals (Overseas)(or British Overseas Citizens if they have failed for any reason to apply for British Nationals (Overseas) status).

A passport issued in connection with either British Nationals (Overseas) or British Overseas Citizens status is no more than a travel document. The right of abode in Hong Kong will be conferred solely by the issue of a Hong Kong identity card provided certain eligibility rules have been met. Unlike their Chinese counterparts, however, non-Chinese BDTCs in addition to meeting these eligibility rules will additionally have to show that Hong Kong is their place of 'permanent residence', the precise meaning of which is not yet very clear.

Children and grandchildren of non-Chinese BDTCs born after 30 June 1997 will acquire British Overseas Citizen status. Children of such grandchildren will, however, be stateless while to further complicate the issue, children of such stateless citizens if born in China will be Chinese under the Chinese nationality law.

All of this is extremely complicated and unsettling for the non-Chinese BDTCs and they are entitled to feel that Her Majesty's Government is in effect telling them that they eventually will have to become Chinese nationals or accept the fact that future generations will become stateless. In short, the British Government is washing its hands of any future responsibility for them and the net effect is that Hong Kong is likely to lose many of these valuable citizens to other territories over the next few years.

For the reasons that I have stated, this should not be allowed to happen. Every effort should be made by this Council and by the Hong Kong authorities to persuade the British Government to accord these less than 10 000 people the protection of British status with the right of abode in Britain or at least retention of BDTC status. The number is small given the population and immigrant/emigrant levels in Britain at present. A great many of the non-Chinese ethnic BDTCs do not wish to leave Hong Kong and would not necessarily wish to go to Britain or elsewhere to live but they should be given the right to do so if, for one reason or another, their future life in Hong Kong becomes unsatisfactory and unhappy.

Sir, I wish to record the view which is shared by a number of my colleagues, that the non-Chinese ethnic minorities in Hong Kong who are BDTCs should, after 30 June 1997, be accorded full British national status with the right of abode in Britain or, at the very least, retention of their BDTC status with right of abode in a British territory.

MR. HUI (in Cantonese):—Sir, I should like to make three points about the White Paper on the Draft Hong Kong (British Nationality) Order 1986:

- (1) From a historical point of view, when the British Nationality Act was passed by Parliament in 1981, holders of Hong Kong British passports under the 1948 Nationality Act became British dependent territories citizens. From the British Government's point of view, this change was intended to prevent some 2 000 000 Hong Kong British subjects from entering Britain for temporary or permanent residence. There was not much public reaction then to the unfair treatment meted out to holders of Hong Kong British passports. Subsequently, when the Sino-British Joint Declaration took effect, the British Government formally proposed this Draft Order, introducing a British National (Overseas) passport to replace the British Dependent Territories Citizen passport by 1 July 1997, the latter ceasing to be effective on that day. This action, from the British Government's point of view, is to implement the provisions laid down in the memorandum attached to the Joint Declaration. I believe that what the majority of holders of BDTC passports are concerned about most is the convenience, recognition, and acceptability by third countries of the new passport when it is used during the transitional period (from now to 1 July 1997) and after 1 July 1997. I support Mr. SWAINE'S request that it should be clearly stated in the new passport that the holder is entitled to enter the United Kingdom without having to apply for a certificate of entry beforehand. It should also be made clear that holders of the passport have the right of permanent residence in Hong Kong. This is the minimum moral obligation which Britain has to take up. It is the minimum of right to be enjoyed by the new passport holders. It is a matter of regret that during the past few years, the British Government has not been able, in any real, moral, or timely sense, to look after the interests of British subjects in Hong Kong. It therefore seems that Hong Kong BDTCs have no real alternative but to apply for the new passports after 1 July 1997, and this is an extreme predicament to be in.
- (2) You, Sir, and other Members of this Council, might be aware that certain resolutions have been concluded in principle at the meeting of the Sino-British Joint Liaison Group, which ended in Beijing last week,

concerning the status, use, and details of implementation of the new passport. The Chinese Government has agreed that in the future Hong Kong Special Administrative Region citizens can hold concurrently passports or travel documents issued by the Special Administrative Region Government and British National (Overseas) passports, the latter being considered only as travel documents by the Chinese Government. I am none the less deeply concerned about the future plight of some 960 000 certificate of identity holders. According to statistics obtained from the Hong Kong Immigration Department, there are about 160 000 certificate of identity holders going in and out of Hong Kong every month. Some of my colleagues in this Council are included in this figure. They may travel for business or tourism, or for other reasons. According to my estimate, there are more than 1 000 000 people who are eligible to obtain certificates of identity but, for whatever reasons, have not yet applied for them. This silent majority, who are not British Dependent Territories citizens, would be unable to obtain the new passports on or after 1 July 1987 unless they are willing to apply for naturalisation as British Dependent Territories citizens on or before 1 July 1977 under clause 18 of the British Nationality Act 1981. However, it is doubtful whether these Hong Kong certificate of identity holders would make applications by using this means. I cannot make any forecast or assessment about this.

- (3) It is stated in section XIV of annex I of the Joint Declaration that people who were born or who have ordinarily resided in Hong Kong for a continuous period of seven years or more will become citizens of the Hong Kong Special Administrative Region and will be qualified to obtain passports or travel documents issued by the Special Administrative Region. But for people currently holding certificates of identity or those who will hold them in the future, if they are unwilling after 1997 to become citizens of the People's Republic of China, (for example Hong Kong Chinese for political reasons) it is very possible that problems of nationality would arise on or after 1 July 1997. In this regard, I urge the Government to pay attention to the above-mentioned situation and negotiate with the relevant authority at an early date the status, rights, and alterations to issuing procedures regarding certificate of identity holders during the transitional period. The purpose is to obtain a satisfactory reply so that certificate of identity holders need not have any anxiety.

Sir, with these remarks I support the motion.

MR. MARTIN LEE:—Sir, the solution of the Hong Kong problem by the Chinese and the British Governments in the Joint Declaration is to adopt a policy of 'one country two systems' for 50 years from Tuesday, 1 July 1997.

In order to implement its obligations under the Joint Declaration, the British Government finds it necessary to introduce yet another type of nationality, namely, British National (Overseas), thus adopting a formula of 'one country, six citizenships'. There is a different British passport for each of these six types of British nationals. They all have the same blue colour, but with different shades of Britishness. Only one can be described as royal blue, as it is the only one that allows its holder entry to Britain.

I agree with my hon. colleague that the minority groups in Hong Kong deserve a better deal than what is now given to them. As they are not of Chinese origin, they cannot be expected to share the same positive feelings of some Chinese in Hong Kong about the return to motherland. Many of these non-Chinese British nationals had come to Hong Kong not because it was Chinese territory, but because it was British. They chose Hong Kong 'because they had faith in the laws and the system of government of Great Britain and because they chose to give or to continue their allegiance to Great Britain'. (Paragraph 9 of the petition by the Council of Hong Kong Indian Associations to UMELCO repeating the words in their petition to Your Excellency dated 17 January 1985.)

Sir, may I quote a few passages from a very recent publication by 'The Joint Council for the Welfare of Immigrants' entitled 'A Question of Belonging—British nationality law and the future of Hong Kong':

'That law (that is, British nationality law) was morally indefensible and has indeed left many Chinese BDTCs in Hong Kong feeling that they have been sold out; but it would be doubly unjust if their situation were to be used as an excuse for failing to act to relieve the plight of an even more disadvantaged group.' (page 24)

At page 26, it reads:

'It must be an absolute priority that the British invention of "one country, six citizenships" does not leave anyone with "one citizenship, no country".'

Their recommendation is as follows:

'The few thousand British nationals in Hong Kong who do not have another nationality and are effectively stateless should therefore be granted full British citizenship'.

Sir, I agree with their view and with my other hon. Friend Mr. John SWAINE in his plea for the 400 or so ex-servicemen in Hong Kong. Every year on Remembrance Sunday, Members of this Council line up before the Cenotaph and pay respect to 'The Glorious Dead', many of whom were the deceased colleagues of these 400 ex-servicemen. It is of course right and proper that we should honour our dead warriors; but should we not also honour the living? Has Great Britain shrunk to such an extent that she cannot even allow such a small number of ex-servicemen to live there, if they should wish to do so?

Sir, I have spent a long time trying to understand the so-called advantages of having a BN(O) passport. I hope that a lot of BDTCs will apply for the new BN(O) passports as soon as they are introduced in 1987; and I pray that one day in the not too distant future immigration officers all over the world will become accustomed to the BN(O) passport. But in all honesty, I really cannot recommend it to the people of Hong Kong now, unless its designer were to make it much more attractive—not just by changing its colour to burgundy, but by endorsing on it a statement that the holder has automatic permission to enter the United Kingdom, or words to that effect, as suggested by my hon. colleague Mr. John SWAINE.

Sir, the present package is not good enough. Let the British Government improve on it before asking the people of Hong Kong to accept it.

MR. LEE YU-TAI:—Sir, the Sino-British Joint Declaration on the question of Hong Kong was the result of two years of diplomatic negotiations, following a visit by the British Prime Minister to Beijing in September 1982. In the course of the two years, the confidence of the people of Hong Kong was undermined, and this was reflected, among other things, in the weakening of the Hong Kong dollar, falling to a record level on 24 September 1983. Since the publication of the Joint Declaration on 26 September 1984, a great deal of the confidence has been restored. The anxiety of many people was dispelled and they thought they could now enjoy a good sleep on the high pillow (高枕無憂).

As the Joint Declaration took so long to finalise, people expected that all obstacles and problems must have been resolved prior to its publication. This does not seem to be the case with respect to the British National (Overseas) passport, which is proposed in the Draft Hong Kong (British Nationality) Order 1986. Press reports touched upon questions and points of detail which required the signatory nations to have further exchanges of views and to reach agreement. These reports might have awakened the people of Hong Kong from their sleep on the high pillow, and aroused new feelings of alarm. It is not in any party's interest if confidence is affected. People must now be reassured that the terms of the Joint Declaration are feasible and will be implemented smoothly.

The people of Hong Kong, ethnic Chinese or otherwise, have chosen to come to this territory on their own volition, or at least their forefathers did. They (perhaps, I should switch to the more appropriate pronoun 'We') have been brought up in this free and open society and established a career. We would prefer opening up as many options as possible so that free choice may be exercised. In this respect the BN(O) passport is an additional option (which is provided, taking account of the historical background of Hong Kong and its realities) and will be welcomed as such. Nevertheless, it contains two major shortcomings, particularly so if intended to refer to nationality. These two shortcomings are as follows:

- (a) It cannot be passed on to subsequent generations (although the British Overseas Citizen passport may be passed on to not more than two subsequent generations).
- (b) It does not in itself grant any right of abode; or at best, it may refer to right of abode in a territory over which the issuing nation no longer has sovereignty.

Many Hong Kong people will take a utilitarian approach. We are aware of the above shortcomings which may lead to the BN(O) passport being regarded as a 'travel document' and not a 'nationality paper'. Yet, many of us will be prepared to acquire the document for utility reasons, if convenience of travel could be ensured. The British Dependent Territories Citizen (BDTC) passport, however unsatisfactory it may be, entitles the holder to exemption from visa for entry to over 70 countries. If the BN(O) is to serve any purpose, it must enjoy the same status with regard to visa exemption. The British Government has said, in loud and clear terms, that they will try their best to negotiate international acceptance of the BN(O) passport. This assurance by word of mouth is not good enough. The people of Hong Kong are pragmatic and will demand action. We want to know how the British Government carry out negotiations, their actual progress and timescale. It is therefore suggested that an action plan should be provided at the earliest opportunity, and progress reports made to the public at regular intervals. Otherwise, the BN(O) will only be 'the king's new dress', as some commentators put it, whose value only 'wise men' can see. At the same time, community leaders (e.g. Members of this Council) and civil servants should be encouraged to acquire the BN(O) at the earliest stage and to try it out in international travel, so as to establish acceptability.

Britain issues the BDTC and BN(O) passport. If she wants these to be accepted, she must take the lead in recognition. It is normal practice for Hong Kong BDTCs to apply for a certificate of entry for travel to Britain. Although we have heard the eloquent argumentation of visitors from Britain that such a certificate is not strictly required (but desirable), we are not convinced. Non-British nationals of the European Community (EEC) enjoy an absolute right to enter Britain, but they have never lived under British administration, and many do not speak English. Hong Kong BDTCs are issued a nationality document by the British administration, but no similar entitlement is granted. If Britain is willing to rectify this disparity, it is entirely within her authority to do so. Action is better than words. Show us what Britain is willing to do.

English and Chinese are freely spoken in this Council, and interpreted into the other language simultaneously. This mixed use of languages highlights the special character of Hong Kong as an international city. The stability and prosperity of our community depends on international business, and free movement and travel are essential. The Administration must ensure that

freedom of travel will continue to be enjoyed by the people of Hong Kong Concurrent possession of two documents may, after 1997, allow a Hong Kong person to enter a third country which has diplomatic relations with only one of the two signatory nations of the Joint Declaration.

In Hong Kong, 3.2 million ethnic Chinese hold BDTC passports, and another two million certificates of identity (CI) or other type of document. The latter document is merely a travel paper which does not carry a nationality. In this respect, the holder of a CI is a stateless person who enjoys exemption from visa for entry only to Singapore, and no other country. Many CI holders have lived here for many years and established a career. They are no less of a Hong Kong believer than a BDTC, but cannot claim a nationality like the latter. If Britain considers that support for the BN(O) is desirable, this category of Hong Kong believers (CI holders) should be encouraged to apply for BDTC status (and subsequently transfer to BN(O)). To provide an incentive, the current naturalisation procedures should be simplified and expedited. A report of the Joint Council for the Welfare of Immigrants (November 1985) has made reference to this unsatisfactory situation.

It would be unfair to leave the subject of statelessness without making a case for the ethnic minorities, although their number is below 20 000. If the 'one country, two systems' concept is to be successfully implemented, the 5.5 million population of Hong Kong must consider themselves as an integrated society and behave like one. Only in this way will Hong Kong function as a distinct system after 1997, following the transfer of sovereignty. The presence of minorities in Hong Kong is a main feature of this international business centre. Among the minorities, the Indian community, comprising around 14 000 people, is the largest group, and it is believed that other minorities will find themselves in a similar situation. I am informed that the Indians in Hong Kong have stayed here for many years, integrated themselves with the local community and regard Hong Kong as their permanent home. All of them came of their own free will, or at least their parents or ancestors did, knowing that Hong Kong was under British administration. Among these Indians, 6 000 hold BDTC passports; of these at least one third (or 2 000) have renounced Indian nationality in favour of British. They claim that they have done so in the belief that the British will not let them down. The Chinese nationality law will not automatically provide a nationality for these minorities. Unless they apply for BN(O) status before 1997, their BDTC status will be changed to BOC (British Overseas Citizen) status on 1 July 1997. As the BN(O) and BOC have shortcomings as mentioned earlier, the Indian representations consider them as travel documents only, which do not carry an effective nationality. In this way the Indians are worried that they will become stateless by the transfer date of 1997.

One may advance the argument that many Indians have come to Hong Kong to make money. This observation may have been true originally and is indeed applicable to other people as well. The present Administration has maintained

stability in Hong Kong, and people with enterprising spirit and commitment have come to establish their business and prosper. The prosperity of this territory is built up through the intelligence and industry of honest businessmen. I am told that the Indian businessmen who have grown affluent have acquired property and are committed to this place. They are unlike speculators who came for quick money and left after reaping a bonanza.

The Indian community now controls around 12 per cent of the import/export trade of Hong Kong, and there are some markets (e.g. West Africa, Middle East) which only they, among Hong Kong businessmen, have penetrated to a significant extent. As the minorities are making useful contributions to the prosperity of Hong Kong, I think their petition should deserve sympathetic consideration.

Sir, as I am a Member joining this Council through an elective process, I feel dutybound to represent the views of Hong Kong people, both ethnic Chinese and minorities included.

I hope these views will not only be heard in Hong Kong, but are also carried forward to Westminster for the parliamentary debate. Thank you very much.

5.50 p.m.

ATTORNEY GENERAL:—Sir, by their speeches on the White Paper on the Draft Hong Kong (British Nationality) Order of 1986, my hon. Friends have raised in the course of this debate a number of important issues. These include the need to make the new BN(O) passport as effective a travel document as the existing BDTC passport in providing access to third countries without the need for a visa; the need to make sure that the BN(O) passport enjoys the confidence of immigration officials of third countries because it has an adequate right of abode endorsement; the need for Her Majesty's Government to do its utmost to try and ensure that the BN(O) passport is widely acceptable internationally and possibly, to this end, include in the passport freedom of entry to the United Kingdom; the need to give sympathetic consideration to the request for right of abode in the United Kingdom from Hong Kong British Dependent Territories citizens who are descended from Indian, Portuguese and other families who are not of Chinese origin and from former servicemen in Hong Kong; and the need to ensure the continued convenience of travel of holders of certificates of identity. With the exception of the last point, (the need to provide for the continued convenience of travel of certificates of identity holders), these issues are essentially matters within the gift of Her Majesty's Government. We shall ensure that Her Majesty's Government see the views of the Members of this Council. I will comment now on those matters of facts and those issues that are within the province of the Hong Kong Government.

A number of Members, including Mr. John SWAINE, Mrs. Selina CHOW, Mr. Stephen CHEONG, Mr. HUI Yin-fat, Mr. Desmond LEE, Dr. HO Kam-fai, Mr. Hilton CHEONG-LEEN pointed to the need to ensure that the new BN(O) passport is as effective a travel document as the existing BDTC passport, in order that Hong Kong BDTCs would continue to have the same convenience of travel in the run up to 1997 and beyond. One aspect of the new BN(O) passport which has given rise to considerable doubts about its usefulness is the fact that it will not carry a direct 'holder has the right of abode in Hong Kong' endorsement, as does the existing BDTC passport. The reason is that as from 1 July 1997, Britain will cease to have sovereignty and jurisdiction over Hong Kong. From that date it would not be appropriate for Her Majesty's Government to state who has the right of abode in Hong Kong. The right of abode endorsement in BN(O) passports will have to be consistent with the constitutional arrangements agreed in the Joint Declaration if it is to be acceptable after 1997. Members will have seen that Baroness Young, Minister of State at the Foreign and Commonwealth Office, said in reply to a parliamentary question in the House of Lords yesterday, that the Chinese side at the recent meeting of the Joint Liaison Group agreed in principle that the wording of the endorsement should be as follows:

'The holder of this passport has Hong Kong permanent identity card No. (XYZ) which states that the holder has the right of abode in Hong Kong.'

By these words, it will be quite clear that the holder has the right of abode in Hong Kong, and that it is his identity card which specifies his right of abode, not Her Majesty's Government. The Secretary for Security has had informal discussions on the acceptability of the new passport with a selection of consular representatives in Hong Kong in the past month. In the light of these discussions, we are confident that a right of abode endorsement along these lines should satisfy immigration officials of third countries of the holder's right to return to Hong Kong without calling for the production of the identity cards themselves, the point addressed by Dr. Ho Kam-fai.

As has already been said and I come to this again because several Members have pressed for a time scale, Her Majesty's Government will start approaching third countries formally after the Order in Council has been made by, probably in April next year, to explain the new BN(O) status, and to ensure that holders of BN(O) passports will enjoy the same access to third countries as holders of BDTC passports. The object will be as Dr. HO Kam-fai reminded us, to ensure that the BN(O) passport will be an effective travel document alone, and that existing entry agreements, especially visa abolition agreements, will continue to apply to BN(O) passport holders. As Members have pointed out, holders of BDTC passports may at present travel without a visa to over 80 countries for visits generally not exceeding three months. Such convenience of travel is greatly treasured by Hong Kong people. Let me assure Members that Her

Majesty's Government has, in conjunction with the Hong Kong Government, been making continuous efforts to remove unjustified entry requirements for Hong Kong BDTCs, and that the Hong Kong Government will be urging Her Majesty's Government to try their utmost to ensure that BN(O) passports holders will enjoy the same degree of convenience of travel.

Mr. Hilton CHEONG-LEEN sought clarification on a couple of points regarding the mechanics of procuring the new BN(O) passports. He asked whether a BDTC could trade in his BN(O) passports for a BDTC passport before 1997 should he become dissatisfied with his BN(O) passport. The answer is 'yes'. There is nothing in law or in passport-issuing practice that would prevent a BDTC who has obtained a BN(O) passport from switching to a BDTC passport provided that he does so some time before 1997, bearing in mind that generally passports with a validity of less than two years are not known to exist. But in line with Her Majesty's Government's established practice on the issue of passports, he can only hold either a BN(O) or a BDTC passport at any one time. Accordingly, if he does not hold a BN(O) passport on 1 July 1997 he will have no British nationality or British passport unless he would otherwise be stateless. Furthermore, BDTC passports issued after 1 July 1987 will have progressively shorter validity periods as 1997 approaches. The answer to Mr. Hilton CHEONG-LEEN'S second question is that BN(O) passports will be valid for 10 years, in line with the normal validity period of British passports. As the process for registration as a BN(O) will be an integral part of the process for acquiring a BN(O) passport, there will be no need for a BDTC separately to register as a BN(O) once he has acquired a BN(O) passport.

My hon. and learned Friend Mr. Martin LEE is not convinced that BDTCs should apply for a BN(O) passport when it becomes available. There are two main reasons why the BN(O) passport is being introduced in 1987. The first is to provide an alternative to the BDTC passport which, from that time onwards will have a progressively shorter period of validity. The second is to allow immigration control points in third countries plenty of time to get used to the new passport. The intention is of course that by the time the BN(O) passport becomes available in 1987, third countries will have accepted it as a valid travel document. If this objective is attained, and I am sure it will, then it will be right for the Government as a whole to encourage BDTCs to move over to the new BN(O) passport.

Also on passports, Mr. Ho Kam-fai, Mr. HUI Yin-fat and Mr. Desmond LEE enquired whether it would be possible for a resident of the Hong Kong Special Administrative Region to hold concurrently a BN(O) passport and a SAR passport. In our view paragraph 3 of section XIV of annex I to the Joint Declaration clearly provides for residents of the Special Administrative Region to hold concurrently a SAR and a BN(O) passport. There can be no other interpretation.

Mr. John SWAINE, Mr. Allen LEE, Mr. Stephen CHEONG, Mr. Desmond LEE and Mr. Thomas CLYDESDALE asked for sympathetic consideration to be given to the request from BDTCs who are not of Chinese origin for grant of British citizenship or right of abode in the United Kingdom. Mr. SWAINE made a similar plea for former servicemen of Hong Kong in recognition of their military service in Hong Kong and elsewhere. Grant of right of abode in the United Kingdom is a matter for Her Majesty's Government and I have no doubt that the eloquent pleas made on their behalf by those in this Council and others outside will reach the ears of those in Westminster by the time that the draft Order comes to be debated.

But there is no question of any person who ceases to be a BDTC on 1 July 1997 by virtue of provisions in the draft Order in Council, or any child born on or after 1 July 1997 to such a person, there is no question of them becoming stateless thereafter. Article 6 of the draft Order provides that any person who ceases to be a BDTC on 1 July 1997 shall automatically become a British Overseas citizen if he would otherwise be stateless. So will any child of a former BDTC born on or after 1 July 1997. The grandchild of a former BDTC will have an entitlement to register as a BOC within 12 months of his birth. Thus the draft Order in Council provides for a form of British nationality to be granted to former BDTCs, their children and grandchildren if they would otherwise be stateless. Like the Chinese BDTCs, BDTCs who are not of Chinese origin will have a right of abode in Hong Kong after 1997 provided that they satisfy the conditions for acquisition of right of abode in the Hong Kong SAR in the Sino-British Joint Declaration. In addition article 7 of the Chinese nationality law makes provision for aliens to acquire Chinese nationality.

Both Mr. HUI Yin-fat and Mr. Desmond LEE drew attention to the need to ensure the continued convenience of travel of holders of certificates of identity. The Government is fully aware of the concern over this issue and the importance of achieving satisfactory arrangements to safeguard the continued ease of travel of holders of certificates of identity. It is estimated that there are over 1.7 million residents in Hong Kong who qualify for the issue of certificates of identity, and over 900 000 certificates of identity are currently in circulation. Over the years the certificate of identity has achieved a high reputation and wide international acceptability. I understand that the issue will be discussed between the British and Chinese Governments in the framework of the Joint Liaison Group.

My final point is that I assure hon. Members again that a full report of this debate will be sent to London so that the points made by hon. Members are taken into account when the draft Order in Council comes before Parliament.

Question put and agreed to.

Next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Order I now adjourn the Council until 2.30 pm on 11 December 1985.

Adjourned accordingly at ten minutes to Six o'clock.

Note: The short titles of motions/Bills in the Hansard Report have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS**Annex I****Written answer by the Secretary for Transport to Mr. Martin LEE'S supplementary question to question No. 3.**

I undertook to consult the Commissioner of Police on whether it would be appropriate to let you have copies of his internal instructions on which procedure to use in speeding cases. This I have now done and his advice is that, for operational reasons, it would be inappropriate to do so.

However, as I said in reply to your question, I do accept there is a need to improve the law in this area and I will shortly be seeking, among other amendments, to remove the mandatory disqualification provisions of section 41(2) of the Road Traffic Ordinance.

Annex II**Written answer by the Secretary for Transport to Mr. NGAI Siu-kit's supplementary question to question No. 3.**

I have been advised that the appeal procedure stated in the Magistrates Ordinance (Chapter 227) applies to appeals in respect of traffic offences. Generally speaking, either party in the proceedings may appeal in writing to the magistrate within 14 clear days after the hearing and determination by the magistrate.

